

*BRITISH AND AMERICAN DIPLOMACY  
AFFECTING CANADA*

*1782-1899*

*With Maps*

*By Thomas Hodgins, Q.C.*









Digitized by the Internet Archive  
in 2024

[https://archive.org/details/bwb\\_P9-DJH-748](https://archive.org/details/bwb_P9-DJH-748)











BRITISH AND AMERICAN  
DIPLOMACY AFFECTING CANADA.

1782—1899.

A CHAPTER OF CANADIAN HISTORY.

BY

THOMAS HODGINS, Q. C.,

FORMERLY SCHOLAR IN CIVIL POLITY AND HISTORY,  
UNIVERSITY OF TORONTO.

WITH MAPS.

*"Thou who didst build up this Brittannick Empire to a glorious and enviable heighth, with all her Daughter Lands about her, stay us in this felicitie."*—JOHN MILTON.

*"This will sometime hence be a vast Empire, the seat of power and learning. Nature has refused it nothing; and there will grow a people out of our little spot, England, that will fill this vast space."*—GENERAL WOLFE.

Toronto :

"THE ROWSELL-HUTCHISON PRESS."  
THE PUBLISHERS' SYNDICATE LIMITED.

---

1900.



## PREFATORY NOTE.

THE substance of the earlier pages of this little work appeared as an Article on "Canada's Loss by the Treaty of Independence," with incidental references to some later Treaties, in an English Review in 1898, a few months before the Joint High Commission assembled in Quebec to adjust the International differences respecting the Fisheries, Trade-Reciprocity, and other matters, between Canada and the United States.

The assumed, but it is to be hoped temporary, failure of the long continued negotiations of the Joint High Commission, has suggested that fuller details of the diplomatic and international incidents, and of the legislative and political acts which have, from time to time, indicated certain lines of policy on the part of the United States affecting the many boundary and fishery disputes, commercial intercourse, and carrying-trade facilities, between Canada and that country, would be of practical utility at the present time.

The compilation and systematic arrangement of these international incidents, and political lines of policy, have necessitated a more exhaustive investigation of the abundant materials contained in State Papers, and other public documents; and have therefore involved very extensive additions to the original Article, so that the present publication is practically a new work.

In making selections from State Papers, and other standard authorities, care has been taken to present accurate statements of the matters discussed, so as to enable readers to realize how the British and American Diplomacy of past years has affected

Canada, and her original territory, and also her international relations, as one of the nation-communities of Greater Britain, with her adjoining neighbour of the United States.

The lessons which that Diplomacy furnishes, in the varied international incidents and lines of policy of former years, if thoroughly studied and appreciated, will be found instructive to the fair-minded Statesmen and people of the communities concerned; and should enable them to realize the far-reaching responsibilities of future Diplomatic negotiations, involving as they do the equitable adjustment of the many pending crucial and disquieting questions affecting the healthful and neighbourly international responsibilities and rights of each nation.

The extracts from the Despatches and Letters noted "MS." are from the originals in the volume of "Oswald Correspondence" in the Public Record Office in London, which—except in a few instances—have never been published in any State Papers or Histories.

The accompanying Map shows the territories of the United States and of Canada, prior to the Treaty of Independence.\*

This little work is sent forth to assist in the study of the past international relations of the United States and Canada, and as a contribution of some materials for a Chapter of Canadian History.

T. H.

---

\* The Map is copied, by permission, from Dr. Winsor's *Narrative and Critical History of America*, v. 7, p. 148.

# CONTENTS.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |       |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|
| PRELIMINARY NEGOTIATIONS FOR THE TREATY OF INDEPENDENCE, 1782..9-18                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |       |
| Opening Negotiations for Peace—American Diplomatic Qualities—<br>“Downfall of a once Respectable Empire”—Fall of Lord North’s<br>Ministry—Dr. Franklin and Lord Shelburne correspond—Lord<br>Shelburne becomes Secretary of State—Sends Mr. Richard Oswald,<br>“a pacifical man,” to negotiate with Dr. Franklin—American com-<br>ments on Oswald’s unfitness—Not a match for Franklin, Jay and<br>Adams—Separate policies of American Diplomats—Franklin pro-<br>poses cession of Canada and Nova Scotia to the United States—Dr.<br>Franklin’s “Canada Paper”—Oswald submits it to Lord Shelburne<br>—But it is not communicated to the King and Cabinet—Lord Shel-<br>burne’s notes on it—Oswald favours the cession of Canada—Cabinet<br>Minute appointing Oswald to negotiate—Oswald’s unfavourable<br>opinion of the conquest of Canada—His disclosure of Ministerial<br>confidences to Franklin. |       |
| MR. RICHARD OSWALD’S APPOINTMENT AS PLENIPOTENTIARY .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 18-24 |
| Lord Shelburne becomes Premier—Oswald’s Commission as Plenipo-<br>tentiary drafted by Jay—Canada’s territorial extent in 1782—<br>Britain’s autocratic “parental government” of her Colonies—Her<br>disregard of the precedents of home revolutions—Value of Canada<br>to the Empire—Franklin’s sketch of Canada’s brilliant future (1764)<br>—Opinion of Congress that Canadian Mississippi-Ohio lands were<br>better than theirs—Oswald again advises cession of Canada—Benja-<br>min Vaughan, a maladroit negotiator, joins Oswald.                                                                                                                                                                                                                                                                                                                                                                  |       |
| POLICY OF THE EUROPEAN ALLIES OF THE UNITED STATES .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | 24-31 |
| France and Spain hostile to the claims of the United States to the<br>Canadian Mississippi-Ohio territory, and Fisheries—British naval<br>successes over France and Spain—Congress instructs its Commis-<br>sioners to follow French advice—And modifies its original <i>ultima-<br/>tum</i> to (1) Independence and (2) Validity of French Treaties—<br>Canadian Fisheries not in modified <i>ultimatum</i> —Depressing military<br>and financial outlook in the United States—Diplomatic and<br>Military influences favourable to Britain—Absence of British<br>advisory control over Oswald—Jay sends Vaughan to Lord Shel-<br>burne to champion American interests—Canada’s original bounda-<br>ries under the Quebec Act, 1774.                                                                                                                                                                    |       |
| PROCEEDINGS ON THE DRAFT TREATY OF INDEPENDENCE .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 31-44 |
| Jay drafts the Treaty—Agreed to by Oswald, who again pleads for<br>the cession of Canada—“Back Lands of Canada”—Divided opin-<br>ions of the Cabinet—Contents of the Draft Treaty—Lord Shelburne<br>and the French Minister on the Loyalists’ claims—Their claims<br>disregarded by Oswald and Vaughan—Severity of the United<br>States to Loyalists—Goldwin Smith’s statement—Impending British                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |       |



national disaster—Britain loses thirteen Colonies, and gratuitously cedes 415,000 square miles of Canadian territory for nine additional States. The King's plaintive letter—Henry Strachey sent to avert the British disaster—American criticisms on him—Oswald's and Vaughan's concessions against him—He gains slight changes—British Commissioners unaware of modified *ultimatum* of the United States—Discussions over the Fishery clauses—Misrepresentation of the then policy of Congress—Jay's admission—Sarcastic letter of French Minister to Franklin—Strachey's private letters on American diplomacy—Its characteristics—Reader's judgment thereon.

#### TREATY OF 1782 A HUMILIATION TO CANADA ..... 44-47

Loss of Territory and Fisheries, and uncertain boundaries—Lord Townsend's opinion—American view—"Bargain struck on the American basis"—Later "good bargains" of Canadian territory—Recent disregard of Canadian rights in Alaska—Further American congratulations—England "endowed the Republic with gigantic boundaries"—"British sacrifice unparalleled in Diplomacy."

#### INTERNATIONAL RELATIONS BETWEEN THE UNITED STATES AND GREAT BRITAIN SINCE THE REVOLUTION ..... 47-53

Diplomatic correspondence show embittered relations—No consideration for Britain's cruciate difficulties owing to Napoleon's Berlin decrees—Inconsistent diplomatic policy of the United States—Mississippi uncertain boundary—Treaty of 1803 settling it rejected by the Senate—Treaty of 1806 extending neutral coast immunity unratified—Origin of the War of 1812—British eastern and western conquests in the United States—Not even a United States sentry in Canada at the close of the War—Britain, although aware of the Mississippi and Maine boundary disputes, restores all its conquests to the United States by the Treaty of Ghent, 1814—Her reward, a vexatious controversy and an armed invasion—Fishery and other rights abrogated by the War.

#### SUBSEQUENT TREATIES BETWEEN THE UNITED STATES AND GREAT BRITAIN. 53-61

Treaty of 1818 concedes certain fishing privileges to the United States—Renunciation by the United States of certain fisheries—Irritating charges against Canada respecting the same—Efforts to settle—United States Tariff policy the real difficulty—Reciprocity Treaty of 1854—United States abrogates it in 1866—Washington Treaty of 1871—One-sided condition against Canada—United States abrogates its Fishery clauses in 1885—Fenian claims against United States rejected, 1871—Curt reply to Canada by the Colonial Secretary—Legislation of Congress injuriously affects Canada's Treaty rights—Canadian vessels stopped at water-ways—Free passage of United States vessels through Canadian Canals—Brown-Thornton Treaty of 1874, rejected by the Senate—Its contents—Chamberlain-Tupper Treaty of 1888, also rejected—Its contents.

#### BRITISH DIPLOMATIC POLICY GENEROUS TO THE UNITED STATES ..... 61-63

Treaty of 1818 ceded Canadian territory at Mississippi and Lake of the Woods to the United States—Ashburton Treaty of 1842 ceded further Canadian territory—Treaty of 1846 ceded Oregon territory—Loss of St. Juan Island owing to the restricted terms of reference.

# BOUNDARY BETWEEN THE UNITED STATES AND CANADA DRAWN ON MAPS IN 1782 .....63-69

Oswald's Map—Strachey's Map—"King's Map"—American Plenipotentiaries transmit marked Maps—Adams's and Jay's Evidence proving boundary lines—All maps with boundary lines in State Department of the United States disappeared in 1828—Franklin's marked Map sent to Jefferson in 1790, produced to Senate on Ashburton Treaty, has also disappeared—Sparks's discovery of Franklin's "Red Line Map" and letter in Paris Archives in 1842—Both sustained British claim of boundary—Original Franklin Map of 1782, in French Archives, has also disappeared, and another substituted (*note*)—Lord Ashburton unacquainted with certain Maps—Webster's suppression of the Franklin Red Line Map.

# SOME CAUSES OF INTERNATIONAL FRICTION BETWEEN GREAT BRITAIN AND THE UNITED STATES .....69 71

Civil Service of the United States subject to political changes—Trained qualities of British Civil Service—How Canada's relations with the United States have suffered—Spurious maps and reports of surveys in 1839-40—Falsified translations of Russian documents in 1893—Faithless United States official not punished—Contradictory affidavits in the Behring Sea Arbitration—Threats to Indians giving evidence to British agent.

# CANADA'S "BAPTISMS OF BLOOD" BY RAIDERS FROM THE UNITED STATES... 72

Invasions of Canadian Territory in 1775-76, 1812-14, and 1837-38—Fenian Raids 1866, 1870, 1871—United States Government aware of proposed Fenian invasions of Canada—Never interfered until filibusters had crossed the boundary, and slain Canadians—Few ring-leaders arrested and speedily released, and their arms restored.

# DISCRIMINATION AGAINST CANADA'S TRADE WITH THE UNITED STATES...73 78

United States Policy of 1806, of 1818, of 1820, of 1887—McKinley and Dingley Tariffs—Unsuccessful effort against British and Canadian Carrying Trade—Retaliatory policy of 1892 respecting the St. Mary Canal—No similar retaliatory laws in British or Canadian legislation—Effect on Canada.

# ACCOUNTABILITY OF THE UNITED STATES TO OTHER NATIONS .....78-83

Political acts tending to degrade another nation—Hostilities of a tactical diplomacy—United States school and history books teach hostility to Britain—Politics there largely controlled by lobbies and bosses—Canada's estimate of their spasmodic political impulses—British indifference and chilling advice to Canada in 1873—Canada's weapons for supremacy on the farm-battle-fields of nature—Her responsibility as a nation-community of Greater Britain—Canadian ideas of friendly relations with the United States—Mr. Secretary Bayard's views—Britain's intervention in favour of the United States in the Spanish-American War.

# BRITISH AND CANADIAN EFFORTS TO ADJUST THE ALASKA BOUNDARY AND OTHER DIFFERENCES WITH THE UNITED STATES .....83-89

Canada's continued conciliatory advances—Opening of Diplomatic Negotiations in 1898—Jeopardized by position taken by the United

States on the Alaska boundary dispute—Departure from the Venezuelan precedent—Involves cession of Canadian territory—Bayard's sentiments forgotten—Russian Treaty of 1825 described Alaska coast line—Measured from the Pacific Ocean—"Ocean," "Coast" and "Shore" in International Law—Artificial shore-lines across bays and rivers—Alaska boundary crosses Canadian rivers and inlets—Lynn Canal the crux of the boundary dispute—Its measurement (*note*)—United States' precedents of 1793, sustain Canada's claim to the Lynn Canal—Arguments of the United States against Canada's claim are conflicting.

CHARGE THAT CANADA HAS TACITLY ALLOWED THE CLAIMS OF THE UNITED STATES RESPECTING THE ALASKA BOUNDARY ..... 89-100

Historical facts disprove the charge—United States obtained possession of Alaska in October, 1867—Canada's urgent and yearly efforts since March, 1872, before any settlements had been made within the disputed area—Canada's action in 1876—United States in 1892, agreed to a Treaty to delimitate the Alaska boundary line "in accordance with the spirit and intent" of the Russian Treaties of 1825 and 1867—Another Treaty in 1897, to settle the line from Mount St. Elias—These Treaties are solemn acknowledgments by the United States of their doubtful title to the territory about the disputed boundary line—They refute the charge of Canada's tacit acquiescence—And prove that no rights from settlement had been acquired or claimed by the United States—United States maps of boundary lines condemned by their State Department—British proposal to accept the Venezuelan conditions a conciliatory departure from the prior Treaties of 1892-7—Its non-acceptance justified the British and Canadian withdrawal from further Negotiations—Further impediments to arbitration by the United States—Special qualities of American diplomacy (*note*)—Conditions required by the United States involved a forced surrender of Canadian territory, and an abandonment of British subjects—*Modus Vivendi* of October, 1899, excludes Canada from Lynn Canal (*note*)—American umpire declined—Negotiations on other Treaty matters suspended—British and Canadian anticipations disappointed—Sir J. A. Macdonald on British indifference and United States unneighbourly policy to Canada—Great Britain's modern Imperialism—British Island Crown's relation to the British Colonial Crowns—Offer of Colonial Representation in the Imperial Parliament by King George III. in 1778, (*note*).

APPENDICES ..... 101-3

No. 1—Articles of the Treaty of 1825 between Great Britain and Russia, describing the boundaries of Alaska.

No. 2—Provisional boundary line between Canada and Alaska, October, 1899.

No. 3—Map of Lynn Canal, showing the respective boundary lines claimed by Canada and the United States.

# BRITISH AND AMERICAN DIPLOMACY AFFECTING CANADA.

1782- 1899.

THE peace negotiations of 1782, which resulted in the "Provisional Articles" of that year, and the "Definitive Treaty" of 1783, acknowledging the Independence of the Thirteen American Colonies, marked the commencement of diplomatic intercourse between the United States and Great Britain. According to the frank avowal of an American apologist, the undertaking was "a difficult errand in diplomacy, especially under circumstances demanding wariness and adroitness, if not even craft and dissimulation;" \* — a grotesque grouping of appropriate, with sinister, diplomatic qualities which were severally illustrated in the international drama then placed on the stage of history. The wariness and adroitness, and perhaps what might be paraphrased as the sinister strategy, of some of the players, the incapacity and blundering indiscretion of others, and the mournful epilogue pronounced by the King over "the downfall of a once respectable Empire," best explain why only one of the nations, then forming the audience, applauded the Treaty.

Peace negotiations between the United States and Great Britain, 1782.

American sketch of the diplomatic qualities.

"Downfall of a respectable Empire."

---

\* *John Adams*, by John T. Morse, Jr. (American Statesmen Series), Boston (1890), p. 165.

Fall of Lord  
North's Min-  
istry, March,  
1782.

Correspond-  
ence between  
Lord Shel-  
burne and  
Dr. Franklin.

Lord Shel-  
burne be-  
comes Secre-  
tary of State.

He sends Mr.  
Oswald to ne-  
gotiate with  
Dr. Franklin.

Mr. Oswald's  
qualifications.

The disaster to Lord Cornwallis at Yorktown, in October, 1781, hastened the downfall of the ministry of Lord North; and in March, 1782, the Rockingham administration came into power,—the chief policy of which was the stoppage of the war in America, and the recognition of the Independence of the Revolted Colonies, as the United States. Shortly before the formation of the new Government, Lord Shelburne had, through a friend, Lord Cholmondely, intimated to Dr. Franklin, then diplomatic representative of the Congress of the United States in Paris, that he would be pleased to hear from him; whereupon Dr. Franklin replied congratulating him on the change of public opinion in England towards America, and expressing the hope that it would tend to produce a general peace. When Dr. Franklin's letter arrived, Lord Shelburne was Secretary of State, and to him must be justly conceded the credit of initiating the peace negotiations which resulted in the Treaty of Independence. But his negotiations were unfortunately sullied by a want of candor.\* Without the knowledge of his colleagues he despatched a Mr. Richard Oswald to Paris with instructions to open informal negotiations for peace with the representative of the American Congress at the French Court.†

Mr. Oswald was introduced by Lord Shelburne to

---

\* This peculiarity in Lord Shelburne's character is referred to in Mr. Lecky's *History of England in the 18th Century*, v. 4, pp. 210-15.

† Lord Shelburne in a debate on the "Manifesto issued by the Commissioners for Quieting the Disorders in the American Colonies" (1778), had rather rashly stated: "that he never would serve with any man—be his abilities what they might—who would either maintain it was right, or consent, to acknowledge the Independence of America." *Parliamentary History*, v. 20, p. 40.



Dr. Franklin as "a pacifical man,\* conversant in those negotiations which are most interesting to mankind,"—  
"A pacifical man."  
 a peculiarity which the Doctor confirmed by describing him as "a plain and sincere old man, who seems now to have no desire but that of being useful in doing good." He had been a successful Scotch merchant in the City of London, was at one time an army contractor, and had acquired, through his wife, large estates in the West Indies and America; and, on account of his connection with both countries, had been occasionally consulted by the Government during the American war.† But a candid, and therefore instructive, comment on Mr. Oswald's unfitness has been furnished by a former eminent American diplomat, that "Of all the remarkable incidents in this remarkable transaction, nothing now seems so difficult to account for as the mode in which Great Britain pursued her objects by negotiation. The individual pitched upon to deal with the United States was a respectable and amiable private gentleman, nominated at the suggestion of Dr. Franklin, with whom he was to treat, because he thought he would get along easily with him; but by no means a match for a combination of three such men as Franklin, Jay and John Adams."  
American comments on Mr. Oswald's unfitness.

---

\* Lord Edmond Fitzmaurice in his *Life of Lord Shelburne*, uses the expression "practical man" (v. 3, p. 177); but all other authorities use the expression given above. See *Life of Franklin*, Written by Himself, v. 3, p. 69; Sparks's *Life of Franklin*, v. 9, p. 241; *Life of John Adams*, by J. Q. Adams and C. F. Adams, v. 2, p. 13; Wharton's *Revolutionary Diplomatic Correspondence of the United States*, v. 5, p. 536.

† *Life of Lord Shelburne*, v. 3, p. 175.

‡ *Life of John Adams*, v. 2, p. 32.

American  
diplomatic  
representa-  
tives.

The representatives of the American Congress were Dr. Franklin, then Minister to France; John Adams, Minister at the Hague, formerly Commissioner to France, and Chief Justice of Massachusetts; John Jay, Minister to Spain, ex-President of Congress, and then Chief Justice of New York; Henry Laurens, Minister to Holland, formerly President of Congress, and who had just been exchanged for Lord Cornwallis.

Unfit repre-  
sentatives has  
been Great  
Britain's  
misfortune.

To be on equal terms with such astute and experienced politicians the same writer has added: "Great Britain had need of the best capacity and diplomatic experience within her borders. But it was her fortune, during all this period,—and indeed almost to the present day,—to insist upon under-rating the people with whom she had to deal, because they had been her dependents; a mistake which has been productive of more unfortunate consequences to herself than an age of repentance can repair."

United and  
separate  
policies of  
American  
diplomats.

The American representatives, though differing on some details of the proposed Treaty of Peace, were united in policy to secure the independence of the American Colonies, and to repudiate all national responsibility for the action of the several States in confiscating the property of the Loyalist British-American subjects. Each of them had, in addition, a special interest to further in the Treaty. Dr. Franklin's was the cession of Canada and Nova Scotia to the United States. Mr. Jay's was the extension of their boundaries through the Indian and Canadian territories westward over the Alleghany Mountains to the Mississippi River. Mr. Adams championed the New Englanders' claim to the Canadian fisheries, which they pressed with extreme anxiety; and they

relied on him to secure the fisheries for them, if it were a human possibility to do so.\*

Mr. Oswald arrived in Paris about the middle of April, 1782; and, after communicating Lord Shelburne's desire for peace to Dr. Franklin, and ascertaining his views, the Doctor gave him a confidential paper of "Notes for mere conversation matter between Mr. Oswald and Mr. Franklin," which contained what, by others, would have been considered a startling proposition—that Great Britain should "voluntarily cede" the whole of Canada and Nova Scotia to the United States.† On his return to London, Mr. Oswald reported to Lord Shelburne the result of his mission, and handed to him the confidential notes, afterwards known in the negotiations as the "Canada paper."‡

Mr. Oswald meets Dr. Franklin, who proposes cession of Canada and Nova Scotia.

Lord Shelburne appears to have given only a partial outline of Mr. Oswald's report to his colleagues in the Cabinet; and he withheld from them all knowledge of the "Canada paper." The excuse offered for him was, that "there was nothing in the contents of the paper, or in the manner in which it came into his hands, which rendered it incumbent on him to communicate it to

Lord Shelburne's partial report to the Ministry.

---

\* Though a claim to the Newfoundland, as well as the Canadian, fisheries was made by the American Commissioners, the negotiations for the cession of Canada and Nova Scotia, did not include the cession of the Island of Newfoundland.

† Sparks's *Life and Writings of Franklin*, v. 9, p. 250.

‡ An American biographer of Dr. Franklin says: "Mr. Oswald, with most undiplomatic readiness, declared that, in his opinion, nothing could be clearer, or more satisfactory and convincing, than the reasoning in that paper. He said he would do his utmost to bring Lord Shelburne to the same view." Parton's *Life of Franklin*, v. 2, p. 461.

his colleagues; and he thought best not to send any formal answer to it."\*

First knowledge of the "Canada paper."

It was from a casual remark of Mr. Oswald, in June, that the existence of the "Canada paper" became known to Mr. Grenville, then representative of the Foreign Office at Paris, who at once reported the matter to Mr. Fox, the Secretary for Foreign Affairs. In his reply, dated 10th June, Mr. Fox said, "The paper relative to Canada I never heard of till I received your letter; and it may be said that Lord Shelburne has withheld from our knowledge matters of importance to the negotiations."†

Lord Shelburne's reticence indefensible.

The reticence of Lord Shelburne in not disclosing to the Crown, or his colleagues, the secret and confidential proposition for the cession of Canada and Nova Scotia, cannot be defended.‡ In the opinion of Lord John Russell, "it is impossible to justify Lord Shelburne for his favourable reception of so important a paper as the one he had received from Franklin about Canada, without communicating the substance of it at least to his colleagues."§ The "Canada paper" also dealt with the question of reparation for the towns and villages which had been burnt by the British and their Indian allies, and gave several arguments why Canada and Nova Scotia should be ceded to the United States, closing with the very tempting inducements that

Contents of the "Canada paper."

---

\* *Life of Lord Shelburne*, v. 3, p. 183.

† *Life of Charles James Fox*, by Lord John Russell, v. 1, p. 313.

‡ Lord Shelburne subsequently declared in the House of Lords that "The great advantage of Monarchy in the British Constitution was that it trusted to the Crown the *secrets* which must necessarily attend all negotiations with Foreign Powers." *Parliamentary History*, v. 23, p. 309.

§ *Memorials of Fox*, v. 1, p. 384.

Great Britain should "in all times coming have and enjoy the right of Free Trade thither, unincumbered with any duties whatever; and that so much of the vacant lands there, shall be sold as will raise a sum sufficient to pay for the houses burnt by the British troops and their Indian allies, and also to indemnify the Royalists for the confiscation of their estates." \*

Lord Shelburne's views respecting the "Canada paper" appear in his "Memorandum for Mr. Oswald in conversation," in which he thus outlined the ministerial policy respecting Canada: Lord Shelburne's notes on the "Canada paper."

"The private paper desires Canada for three reasons:

"1st. By way of reparation. *Answer*: No reparation can be heard of.

"2nd. To prevent future wars. *Answer*: It is hoped that some more friendly method will be found.

"3rd. Loyalists, as a fund of indemnification to them. *Answer*: No independence to be acknowledged without their being taken care of. Penobscot to be always kept." †

None of these details of the policy above indicated was communicated to the Cabinet, or submitted for the sanction of the Crown; and it is even doubtful whether this memorandum respecting the "Canada paper," was more than mere notes for conversation, or that the policy indicated was ever communicated to Mr. Oswald; for Sir G. C. Lewis says: "The probability is that Lord Shelburne made no remark upon it (the Canada paper) to Oswald, fearing that it might offend Frank- Policy not communicated to King or Cabinet.

---

\* Sparks's *Franklin*, v. 9, p. 252.

† Lewis's *Administrations of Great Britain*, p. 47; *Life of Lord Shelburne*, v. 3, p. 188. Penobscot was subsequently ceded.



lin ; and that Oswald construed his silence into approbation." \*

Dr. Franklin's  
comment on  
Mr. Oswald's  
report.

This view appears to be sustained by the entry in Dr. Franklin's diary that, on his return to Paris in May, " Mr. Oswald reported to me his opinion that the affair of Canada would be settled to our satisfaction, and that it was his wish that it might not be mentioned till towards the end of the Treaty." † Lord Edmond Fitzmaurice confirms this by saying that when Mr. Oswald returned the Canada paper to Dr. Franklin, " he expressed his own personal conviction that it had made an impression ; and that if the matter were not given undue prominence during the early stages of the negotiation, a settlement satisfactory to America might still be ultimately arrived at in regard to the cession of Canada and Nova Scotia." ‡

Cession of  
Canada and  
Nova Scotia  
possible.

Cabinet min-  
ute appoint-  
ing Mr.  
Oswald to  
negotiate a  
Treaty.

Acting on such partial report of Mr. Oswald's mission as Lord Shelburne made to his colleagues, the Cabinet, on the 23rd April, 1782, agreed to the following Minute : " It is humbly submitted to His Majesty that Mr. Oswald shall return to Paris, with authority to name Paris as the place, and to settle with Dr. Franklin the most convenient time for setting on foot a negotiation for a general peace ; and to represent to him that the principal points in contemplation are the allowance of Independence to America, upon Great Britain's being restored to the situation she was placed in by the Treaty of 1763 ; and that Mr. Fox shall submit to the consideration of the King a proper person to make a similar communication to M. de Vergennes." §

---

\* Lewis's *Administrations of Great Britain*, p. 48.

† Sparks's *Franklin*, v. 9, p. 269.

‡ *Life of Lord Shelburne*, v. 3, p. 191.

§ *Memorials of Fox*, v. 1, p. 345.

This reference to the Treaty of 1763, and again in a later Minute, dated 18th May, 1782, would lead to the inference that Canada was to be retained; for its cession by France to Great Britain, and the delimitation of its boundaries along the Mississippi, had been settled by that Treaty; \* and rendered it all the more incumbent upon Lord Shelburne to disclose to his colleagues Dr. Franklin's secret and confidential proposition for the cession of Canada.

Mr. Oswald was shorn of the Samson locks of his diplomatic strength when he confided to Dr. Franklin his personal opinion that the conquest of Canada by Great Britain, had an injurious effect on the relations of the American Colonies to the Empire,—an opinion not shared by Dr. Franklin, as will presently appear. And when Dr. Franklin hinted that “England should make us a voluntary offer of Canada,” he found that “Mr. Oswald much liked the idea, and promised that he should endeavour to persuade their doing it;” † which he fulfilled in the following report to Lord Shelburne: “The Doctor touched upon Canada, as he generally does on like occasions, and said there could be no dependence on peace and good neighbourhood while that country continued under a different government, as it touched their States on so great a stretch

Treaty with France, of 1763, described Canada's boundaries.

Mr. Oswald's opinion that the conquest of Canada was injurious to the Empire.

He favours Dr. Franklin's idea of the cession of Canada.

---

\* In the negotiations for this Treaty it was admitted that the Alleghanies (Appalachies) formed the western boundary of the then American Colonies; but the French contended that the valley of the Mississippi belonged to Louisiana, and formed no part of the territory of Canada, which France had agreed to cede. Great Britain maintained the contrary, and after nearly three years dispute, the French gave way, and Canada was ultimately ceded to Great Britain with the Mississippi River as its western boundary.

† Sparks's *Franklin*, v. 9, p. 254.

of frontier. I told him I was sensible of that inconvenience ; but having no orders, the consideration of that matter might possibly be taken up at some future time." \*

Mr. Oswald  
discloses con-  
fidential  
opinions of  
Ministers.

Lord Shelburne's biographer relates how Mr. Oswald also indiscreetly disclosed to the American plenipotentiary the confidential and personal opinions of certain members of the Cabinet: "Oswald told Franklin that personally he agreed with him; and he also mentioned that he had not concealed his opinion when in England, but had urged the cession of Canada during an interview with Rockingham, Shelburne and Fox. The two former, he said, spoke reservedly on the point, but in his opinion did not seem very averse to it. Fox, however, seemed startled at the proposition."† This statement is confirmed by an entry in Dr. Franklin's diary.

Lord Shel-  
burne be-  
comes  
Premier.

The death of Lord Rockingham, and the succession of Lord Shelburne to the Premiership, led to the resignation of Mr. Fox, which was followed by the withdrawal of Mr. Grenville from Paris; and enabled Lord Shelburne to comply with Dr. Franklin's urgent request that Mr. Oswald should be sent to treat. Accordingly,

Mr. Fox  
resigns.

And Mr.  
Oswald's  
commission is  
drafted by  
Mr. Jay.

Lord Shelburne's "pacifical man" became the British plenipotentiary under a Commission, drafted for the British Ministry by Mr. Jay, "in his own handwriting,"‡ authorizing him to treat with the "Commis-

---

\* MS. Despatch, Oswald to the Foreign Secretary, Paris, 11th August, 1782.

† *Life of Lord Shelburne*, v. 3, p. 206; Sparks's *Franklin*, v. 9, p. 316.

‡ "It was a singular circumstance that one who had lately been regarded as a rebel-subject of the British Monarch should now prepare a Commission from that Monarch by which his late Colonies were to be acknowledged free and independent." *Life of John Jay*, v. 1, p. 143.

sioners of the United States," for the settlement of the great political and territorial interests which eminently required an experienced and adroit negotiator, <sup>Diplomatic qualities required.</sup> skilled in judicious and tactful diplomacy; and one who had a local knowledge of the territorial localities of Colonial America and Canada, equal to that possessed by the American Commissioners.

Canada at that time was one of Great Britain's <sup>Canada in 1782, Great Britain's</sup> largest and most important territorial possessions; for it included not only her present great domain, but also <sup>greatest colonial possession.</sup> the Great Lakes and the fertile agricultural territory south of Lakes Erie, Huron, Michigan and Superior, down to the confluence of the Ohio and Mississippi rivers, about latitude 37° N.—out of which Canadian, and subsequently ceded, territory, containing about 280,000 square miles, were formed the modern States of Ohio, Indiana, Illinois, Michigan, Wisconsin and Minnesota\*—a territory contemptuously described by <sup>Mr. Oswald's</sup> Mr. Oswald in his despatches as the "*back lands of* <sup>contemptuous opinion of</sup> *Canada,*" "*a country worth nothing, and of no importance;*"† but which, if it had been retained by Great

---

\* To this must be added the south-eastern or "Indian territory," lying between the Alleghany Mountains, Spanish Florida and the Ohio River, containing about 135,000 square miles,—which had formed no part of the old Colonies;—out of which were subsequently formed the States of Kentucky, Tennessee and Alabama.

† Six years prior to Mr. Oswald's despatch, this portion of Canada had been thus described: "The triangular track of land between the Mississippi, the Ohio and Lake Erie, is the finest spot of earth on the globe, swelling with moderate hills, but no mountains; watered by the finest rivers, and of the most delightful climate; the soil, as appears from the woods with which it is clothed, is of the most abundant fruitfulness and vegetation. It abounds with coal; and there are multitudes of salt-springs in all parts of it. There are mines of iron, copper and lead. Wild rye grows there

Original  
area of Can-  
ada equal to  
Russia (ex-  
cluding  
Siberia).

Great  
Britain's  
policy as a  
Sea Power.

Her old fash-  
ioned paren-  
tal despotism  
over the colo-  
nies.

Her disregard  
of her island  
precedents of  
revolutions.

Britain, would have made her combined Canadian possessions in North America over 4,000,000 square miles, or larger than the territorial area of Russia in Europe and Asia (excluding Siberia); and would have constituted British influence the imperial and dominant power on the American continent.\*

Great Britain was then more intent upon humbling the European nations which had challenged her supremacy as a Sea Power, by despoiling them of their territorial possessions, than in acquiring colonial homes for her adventurous people, and markets for her manufacturers, which, in our times, constitute her more beneficent and Imperial policy. A century ago she governed her Colonies after an autocratic and old-fashioned "parental-government" despotism,—for she recognized, and would then learn, no other. While her army and navy were adding to her Colonial Empire, her home statesmen, though trustees of the constitutional rights and traditions of all the subjects of the Crown, denied those rights and traditions to their Colonial fellow-subjects; and forgetting the revolutionary teachings of former home despotisms, imposed on the American Colonists a despotism which recalled the island precedents of revolutionary resistance;† and

---

spontaneously." *Map of the Middle British Colonies in North America*, by ex-Governor T. Pownall, M.P., published by J. Almon, London, 1776.

\* The claim of the United States to Canada was gravely asserted on the ground that: "By the Treaty of Paris of 1763, Article VII., Canada was expressly and irrevocably ceded by France to the King of Great Britain, and that the United States are, in consequence of the Revolution in their government, entitled to the benefits of that cession." *Secret Journals of Congress*, 1780, v. 2, p. 327.

† "The structure of the British Government was made to rest upon the people's right of resistance, as upon its corner stone. \* \*



ultimately caused the loss of an extended and flourishing Colonial Empire, and a loyal and sympathetic kindred.

The value of Canada to the Empire—won from France on Canadian battle-grounds—was well-known to Dr. Franklin, the writer of the “Canada paper,” for he had, the year after its conquest, thus graphically sketched a brilliant future for it, in the following letter to Lord Kames :

“ No one can more sincerely rejoice than I do on the reduction of Canada ; and this not merely as I am a Colonist, but as I am a Briton. I have long been of the opinion that the foundation of the future grandeur and stability of the British Empire lie in America ; and though, like other foundations, they are low and little now, they are nevertheless broad and strong enough to support the greatest political structure that human wisdom ever yet erected. I am, therefore, by no means for restoring Canada to France. If we keep it, all the country from the St. Lawrence to the Mississippi will become vastly more populous by the immense increase of commerce ; and your naval power, thence continually increasing, will extend your influence round the globe, and awe the world.” \*

Such was the prophetic picture of British territorial and commercial supremacy on the North American continent, drawn by the diplomat who now coveted the whole of the Canadian domain for his nation, and to

Value of  
Canada.

Dr. Frank-  
lin's brilliant  
sketch of  
Canada in  
1764.

Now coveted  
for U.S.

---

We should ever bear in mind how essential to the preservation of the Constitution this principle of resistance is ; an extremity to be cautiously embraced, but still a remedy within the people's reach ; a protection to which they can and will resort, as often as their Rulers make such a recourse necessary for self-defence.” *Political Philosophy*, by Lord Brougham, v. 3, p. 293.

\* *Life of Franklin*, Written by Himself, v. 1, p. 299.

whom the British representative had imparted the encouraging information that, before he left England, he had advised her Ministers "that in his opinion Canada should be given up to the United States, as it would prevent occasions of future differences, and as the Government of such a country was worth nothing, and of no importance, and that he was not without hopes it would be agreed to."\*

Mr. Oswald's unfavourable opinion of Canada was evidently not concurred in by Dr. Franklin, nor did it weaken his efforts to secure its cession. Nor did it in any way deter Congress from pressing for its acquisition: "Great Britain already possesses Canada and Nova Scotia; should that immense territory, which lies upon the rear of these States, from the Gulf of St. Lawrence to the Gulf of Mexico, be acknowledged to be vested in Great Britain, it will render our situation truly hazardous. The lands, as you know, are infinitely better than those on the coast; they have an open communication with the sea by the River St. Lawrence and Mississippi, and with each other by those extensive inland seas with which America abounds. They will be settled with the utmost rapidity from Europe, but more particularly from these States, for the fertility of their soil will invite numbers to leave us."†

About this time another, and perhaps more maladroit, negotiator, Mr. Benjamin Vaughan, an intimate

\* Wharton's *Revolutionary Diplomatic Correspondence*, v. 5, p. 572.

† Sparks's *Diplomatic Correspondence of the Revolution*, v. 3, p. 273. The Articles of the Confederation of the United States, 1778, provided that "Canada acceding to this Confederation, and joining in the measures of the United States, shall be admitted into and entitled to all the advantages of this Union."

friend of Dr. Franklin, was despatched by Lord Shelburne "to give private assurances to the latter that the change of Administration brought with it no change of policy." \* Mr. Vaughan appears to have been a twin neophyte in diplomacy to Mr. Oswald, for he indiscreetly admitted to Mr. Adams that many of "the best men in England were for giving up Canada and Nova Scotia."† But his peculiar unfitness for even a minor public service may be realized from a perusal of the childish pathos he poured out in a letter to Dr. Franklin, which must have been smilingly read by that astute diplomatist :

"My Dear Sir:—I am so agitated with the present crisis that I cannot help writing to you, to beseech you, again and again, to meditate upon some mild expedient about the Refugees, or to give a favourable ear and helping hand to such as may turn up. If I can judge of favourable moments, the present is of all others most favourable. We have liberal American Commissioners at Paris, a liberal English Commissioner, and a liberal First Minister in England. All these circumstances may vanish to-morrow, if the Treaty blows over. I pray, then, my dearest, dearest Sir, that you would a little take this matter to heart. If the Refugees are not silenced, you must be sensible what constant prompters to evil measures you leave us; what perpetual sources of bad information. If the Minister is able, on the other hand, to hold up his head on this

Also favours  
the cession of  
Canada and  
Nova Scotia.

His pathetic  
letter to Dr.  
Franklin.

---

\* *Life of Lord Shelburne*, v. 3, p. 242.

† "As to Mr. Vaughan, he seems so willing to be active, and so void of judgment, that it is fortunate he has no business; and the sooner he returns to his family the better." Letter from King George III. to Lord Shelburne, 22nd December, 1782.

one point, you must see how much easier it will be for you both to carry on the great work of the union, as far as relates to Prince and people. Besides, you are the most magnanimous nation, and can excuse things to your people, which *we* can less excuse to *ours*. To judge which is the hardest task, yours or England's, put yourself in Lord Shelburne's place. The only marks of confidence shown him at Paris are such as he *dares not name*. Excuse this freedom, my dearest Sir; it is the result of a very warm heart, that thinks a little property *nothing*, to much happiness. I do not, however, ask you to do a dishonourable thing, but simply to save England, and to give our English Ministry the means of saying on the 5th December that we have done *more* than the last Ministry have done. I hope you will not think this real persecution."\*

France and Spain hostile to the extension of the U. S. to the Mississippi.

And to the U. S. claims to the Canadian fisheries.

Prior to the arrival of this "agitated" diplomat in Paris, the French Government had intimated to the American Congress that the influence of France and Spain was hostile to the extension of the United States' boundaries through Canadian territory to the Mississippi, and to their claims to the Canadian fisheries. And M. de Vergennes, the French Foreign Minister, emphasized this in Paris, by arguing with the American Commissioners in favour of England, and by declaring that the demands of the Americans were unreasonable, and that France would not continue the war for American objects.† Nor were the English Ministers

---

\* Sparks's *Franklin*, v. 9, p. 433. The italics are as in the original letter.

† Winsor's *Narrative and Critical History of America*, v. 7, p. 140

ignorant of this decision of the Allied powers. Mr. Fitzherbert, the British Plenipotentiary to France, was also informed by the French Minister that it was the joint policy of France and Spain to shut out the United States from the Mississippi, the Gulf of St. Lawrence, the Great Lakes, and the fisheries; and he was urged to concur with France in a concert of measures for that purpose,—because it could only be accomplished by the approval and aid of Great Britain.\*

And M. de Rayneval, who had been sent to London on a confidential mission to the British Ministry, also expressed to them the “strong opinion” of the French Government “against the American claims to the Fisheries, and to the valley of the Mississippi and the Ohio.” “These opinions,” says Lord Shelburne’s biographer, “were carefully noted by Shelburne and Grantham.”† That this was the known policy of the French Court, is confirmed by the American Commissioners’ Report to Congress, after the Treaty was signed, that “as the Articles respecting the boundaries, the refugees, and fisheries, did not correspond with the policy of this (French) Court, we did not communicate the preliminaries to the Minister until after they were signed; and not, even then, the separate article.”‡

Their joint policy communicated to Great Britain.

Their policy known to the American Commissioners.

\* *Ibid.*, pp. 120 and 122. Sparks’s *Franklin*, v. 9, p. 386.

† *Life of Lord Shelburne*, v. 3, p. 263. M. de Rayneval also wrote to the American Commissioners: “It is clearly evident that the Court of London, when it was as yet Sovereign of the Thirteen Colonies, did not consider the vast territories situated eastward of the Mississippi, as forming part of these same Colonies.” M. de Rayneval to John Jay, 6th September, 1782; Wharton’s *Revolutionary Diplomatic Correspondence*, v. 6, p. 25.

‡ Sparks’s *Diplomatic Correspondence of the Revolution*, v. 10, p. 120.



British Naval  
victories ruin  
the sea power  
of France and  
Spain.

Congress  
instructs its  
Commis-  
sioners to be  
governed by  
French ad-  
vice.

British diplo-  
macy aided  
by U. S. modi-  
fied *ultima-  
tum*.

During these negotiations, the naval victory of Lord Rodney over the French fleet under DeGrasse, in the West Indian waters, in April, 1782, and the successes of Sir George Elliott and Lord Howe, at Gibraltar, in September, 1782, had ruined the sea power of France and Spain, and had given the finishing blow to the then European war against Great Britain. In America, Congress, in acknowledgment of the material aid of France in assisting the United States to a national existence, had given imperative instructions to the American Commissioners that in their negotiations with Great Britain they were "to make the most candid and confidential communications upon all subjects to the Ministers of our generous ally, the King of France; and to undertake nothing in the negotiations for peace or truce, without their knowledge and concurrence; and ultimately to govern yourselves by their advice and opinion." \* And pending the negotiations, Congress communicated the following resolution to the French Plenipotentiary: "That they will hearken to no propositions which shall not be discussed in confidence, and in concert, with His Most Christian Majesty." †

The diplomatic position of Lord Shelburne's Government was also materially aided by the modified instructions and *ultimatum* of the American Congress. In the earlier sessions, Congress had instructed its Commissioners, that in any negotiations with Great Britain, they were to insist upon the grant of Independence, the Mississippi boundaries, and the Fisheries, subsequently adding, however, the following modification :

---

\* *Secret Journals of Congress*, v. 3, p. 138.

† Sparks's *Diplomatic Correspondence of the Revolution*, v. 10, p. 86.

"Although it is of the utmost importance to the peace and commerce of the United States, that Canada and Nova Scotia should be ceded, and more particularly that the equal common right of the United States to the fisheries should be guaranteed to them, yet a desire of terminating the war has induced us not to make the acquisition of these objects an *ultimatum* on the present occasion."\* The modified instructions of U. S. demands in 1781 June, 1781, informed the Commissioners that Congress limited to thought it "unsafe at this distance, to tie them up by two essentials. absolute and peremptory directions upon any other subject than the two essential articles" which were:

(1) To effectually secure the independency and sovereignty of the United States; and (2) That the treaties with France should be left in their full force and validity; adding: "You are therefore to use your own judgment and prudence in securing the interest of the United States in such manner as circumstances may direct, and as the state of the belligerent, and disposition of the mediating, powers may require." (1) Independence. (2) Validity of French Treaties.

"But if a difficulty should arise in the course of the negotiation for peace, from the backwardness of Britain to make a formal acknowledgment of our Independence, you are at liberty to agree to a truce, or to make such other concessions as may not affect the substance of what we contend for, and provided that Great Britain be not left in possession of any part of the Thirteen United States."†

The subsequent action of Congress respecting the Fisheries appeared in the report of a Committee recommending "that the best security for obtaining a

Action of Congress respecting the Fisheries.

---

\* *Secret Journals of Congress*, v. 2, p. 228.

† Wharton's *Revolutionary Diplomatic Correspondence*, v. 4, p. 477.

right to the Fisheries, short of admitting it into the *ultimatum* for Peace, will be a representation to His Most Christian Majesty (of France) through one of the Ministers for negotiating the Peace, of its great importance to the United States, and of the grounds upon which it is claimed and expected.”\*

U. S. Commissioners aware of the modified *ultimatum*.

The American Commissioners were, therefore, fully aware, before the negotiations commenced with Mr. Oswald, that Congress had modified and practically limited its *ultimatum* to the independence of the United States, and the validity of the treaties with France. But not being as simple-minded as Mr. Oswald or Mr. Vaughan, they did not reciprocate the blundering indiscretion of these gentlemen, by disclosing to them the secret and confidential action of Congress respecting the desired treaty with Great Britain.

Depressing outlook in the United States.

At this time the military and financial outlook of the United States was depressing. General Washington reported to Congress that it was impossible to recruit the army by voluntary enlistment. Silas Deane, in private letters, intimated that it would be impossible to maintain the army another year. The Secretary of State wrote to Dr. Franklin about their mortifying financial disappointments, and the “importunate demands for money,”—adding: “The army demand with importunity their arrears of pay. The Treasury is empty, and there are no adequate means of filling it.”† And again: “Never was there a time when money was more necessary. The total abolition of paper money, the length of the war, the arrears of debts, and the slender thread by which

U. S. Treasury empty.

---

\* *Secret Journals of Congress*, v. 3, p. 151.

† Lecky's *History of England in the 18th Century*, v. 4, pp. 250-51.

public credit hangs, put it totally out of our power to make any great exertions without the immediate supply of money." \*

Such were the favourable diplomatic and military <sup>British diplomatic and military influences.</sup> influences assisting the Ministry of Great Britain in these negotiations. But there was then no masterful or Palmerstonian mind moulding British diplomacy. The absence of even an advisory control is apparent in the confession made by Lord Shelburne to Mr. Oswald, <sup>Lord Shelburne's confession.</sup> Lord a month before the Treaty was signed: "As you desire to be assisted by my advice, I should act with great insincerity if I did not convey to you that I find it difficult, if not impossible, to enter into the policy of all you recommend upon the subject, both of the fisheries and the boundaries." † He had previously informed him: "We have put the greatest confidence <sup>His great confidence in the U. S. Commissioners.</sup> ever placed in man in the American Commissioners." No wonder, therefore, that, after these admissions, Messrs. Oswald and Vaughan were enabled to give effect to their unpatriotic policy respecting Canada, <sup>The result.</sup> and to concede to the United States more than was believed possible by that nation, or their European allies.

Mr. Jay, suspecting that M. de Vergennes was <sup>Mr. Vaughan's new mission</sup> "plotting with Fitzherbert in order to exclude the New England fishermen from the Newfoundland banks, and to keep the valley of the Ohio for England," § induced Mr. Vaughan to return to England ¶

\* Sparks's *Diplomatic Correspondence of the Revolution*, v. 3, p. 251.

† Wharton's *Digest of International Law*, v. 3, p. 906.

‡ *Ibid*, p. 905.

§ *Life of Lord Shelburne*, v. 3, p. 254.

¶ Mr. Lecky says that "Jay despatched a secret messenger of his own." (v. 4, p. 285.) Mr. Vaughan was the only one sent: See Wharton's *Revolutionary Diplomatic Correspondence*, v. 1, p. 647.

and "tell Lord Shelburne of the American sentiment and resolution respecting these matters." \* To which Mr. Adams added his advice: "I desired him—between him and me—to consider whether we could have any real peace with Canada or Nova Scotia in the hands of the English."

He cham-  
pions Ameri-  
can interests.

Canada's re-  
duced strip of  
territory.

Quebec Act  
described  
Canada's  
original  
boundaries.

Mr. Vaughan accepted the commission of Messrs. Jay and Adams, to champion American interests, and to impress upon Lord Shelburne "the necessity of taking a decided and manly part respecting America," and not "seek to secure the possession of vast tracts of wilderness." He was disastrously successful; and Lord Shelburne and his colleagues thereupon consented to grant "a confinement of the boundaries of Canada" to a narrow strip of territory along the St. Lawrence and Ottawa rivers. In authorizing Mr. Oswald to so agree, Mr. Secretary Townshend said: "The third article must be understood and expressed to be confined to the limits of Canada as before the Act of 1774." †

The Act referred to, known as "The Quebec Act," was passed on the 13th January, 1774,—prior to the Revolution,—and described the boundaries of Canada from the Bay of Chaleurs on the Atlantic, to the St. Lawrence, on more southerly lines than the present Treaty boundary; thence up the St. Lawrence River, and through Lake Ontario and the Niagara River into Lake Erie, to the point where the boundary of Pennsylvania intersected its shore, thence southward, along that boundary, to the Ohio River, and down it to its

---

\* Winsor's *History of America*, v. 7, p. 123.

† MS. Despatch, Whitehall, 1st September, 1782. The limits here referred to were those described in the Proclamation of October, 1763.



confluence with the Mississippi, and thence turning northward, through the Mississippi River, to the Hudson's Bay Territories.\*

Acting on the Foreign Secretary's instructions, Mr. Oswald provisionally agreed to the outlines of the Treaty of Independence drafted by Mr. Jay; and then transmitted them to Mr. Secretary Townshend with the "Minutes regarding the Treaty with the Commissioners of the Colonies, and what is required of me by His Majesty's Ministers on that head," in which he reported "the articles said to be necessary and indispensable," as follows:

"(1) Independence,—supposed to be granted as a Preliminary. (2) A settlement of the boundaries between the Thirteen States and the King's Colonies. (3) A cession to the Thirteen States, or to Congress, of that part of Canada, that was added to it by the Act of Parliament in the year 1774,—said to be necessary and indispensable." "If not granted there would be a good deal of difficulty in settling the boundaries of the Thirteen States, especially on their western frontier, as the said addition sweeps round behind them; and I make no doubt a refusal would occasion a particular grudge, as a deprivation of an extent of valuable territory the Provinces had counted upon, and only waiting to be settled and taken into their respective Governments.† I shall therefore suppose this demand will be

Mr. Oswald agrees to Mr. Jay's draft treaty.

He advises cession of Canadian lands to U. S.

Refusal would create a grudge.

---

\* The Supreme Court of the United States has held that, by the Treaty of Independence, the United States succeeded to all the sovereign rights which the King of France had in the Canadian territory between the Ohio and Mississippi, and which he had ceded to Great Britain, as Canada, in 1763. *United States v. Repentigny*, 5 Wallace's Reports, 211.

† The Quebec Act, being a Charter of Government to that Province with described boundaries, having become law before the

|                                                |                                                                                                                                                                                                                                                                                                                                        |
|------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                | granted, upon certain conditions." Mr. Oswald also                                                                                                                                                                                                                                                                                     |
| And as "advisable articles."                   | reported the Doctor's "advisable articles, and proper to reconcile the Americans to a cordial and friendly correspondence with Great Britain, and which he thought were necessary to erase those impressions of resentment for past injuries which otherwise must remain on the minds of the inhabitants of those colonies for ages to |
| Money indemnification.                         | come, viz.: (1) £500,000 or £600,000 as indemnification to the sufferers of the Thirteen States, for burning and destroying their towns, houses and other property.                                                                                                                                                                    |
| Parliament's sympathy for misfortunes of U. S. | (2) Some sort of acknowledgment, in an Act of Parliament or otherwise, of our concern for those misfortunes. (3) American ships and trade to be on the                                                                                                                                                                                 |
| U. S. ships and trade equal to British.        | same footing in England and Ireland as our ships, and trade. (4) A surrender to Congress of every part of the remainder of Canada, after the said reduction to the                                                                                                                                                                     |
| Surrender of whole of Canada to U. S.          | limits preceding 1774, reserving to Great Britain a full freedom of fishing, and of imports and exports in general, free of all charges of import or other duties." *                                                                                                                                                                  |
| Dr. Franklin's further demands.                | Mr. Oswald's ready assent to the cession of Canada and Nova Scotia, desired by Dr. Franklin, appears to have suggested to that astute diplomatist less conciliatory demands; for Mr. Oswald goes on to say: "In April, when I first came over, Dr. Franklin mentioned the reservation of the Canada lands, only as a thing             |
| Cession of Canada desirable.                   | very desirable for the sake of preventing disturbances and quarrels between the inhabitants living under different governments; and he proposed, in case the grant was made, that the lands should be sold, and the                                                                                                                    |

Revolution, and while the Thirteen Colonies were subject to Great Britain, was binding, as to boundaries, on the American Colonies lying along the boundaries of Canada described in that Act.

\* MS. Despatch, Oswald to the Foreign Secretary, Paris, 11th September, 1782.

money applied for the relief of the sufferers on both sides, as expressly specified in a writing which he put into my hands with a liberty of perusal when necessary. Since then, and particularly in July last, he proposed that these *back lands of Canada* should be given up, and no allowance made out of that fund for the sufferers on both sides. But, on the contrary, that a sum of money (£500,000 to £600,000) should be granted by Great Britain for the sufferers in the American cause. I am afraid it will not be possible to bring him back to the proposition made in April, although I shall try it. Meantime I can plead that by resigning the sovereignty into the hands of Congress, the purpose for which he wished to have these additional lands given up (being that of preventing quarrels amongst the inhabitants), will not be disappointed, since Congress may settle them in any manner they think proper, whatever way the value or price of the land is disposed of." \*

Such pleading of the American cause by a British plenipotentiary seems to have aroused the indignation of some members of Lord Shelburne's Cabinet. "Richmond and Keppel were very bitter against Oswald, who, they declared, was only an additional American negotiator, and they proposed to recall him. This Shelburne and Townshend refused to do, as they especially desired that Oswald should be at Paris to negotiate a commercial treaty." †

Diplomatic disaster to British and Canadian interests now seemed imminent. Mr. Jay, having obtained Mr. Oswald's ready assent, drafted the Treaty, which the latter forwarded to London as "a true copy of what has

\* MS. Despatch, *Ibid.*

† *Life of Lord Shelburne*, v. 3, p. 298.

been agreed on between the American Commissioners and me to be submitted to His Majesty's consideration."\*

Draft Treaty provided for  
(1) Independence.  
(2) Cession of Canadian territory, and its British settlers.

It provided for : (1) The Independence of the United States. (2) The cession of nearly the whole of Canada, including what are now the best settled parts of Ontario, with the thousands of British Loyalists and French Canadians by whom it had been settled,—the boundary being from the Atlantic on similar lines to those described in the subsequently signed Treaty, as far as latitude 45° on the St. Lawrence, at which point it was proposed to cross the river, and to run from "thence straight to the south end of Lake Nipissing, and thence straight to the source of the River Mississippi." † (3)

(3) *Right to Canadian fisheries.*

The cession of the Canadian fisheries in these words : "the people of the United States shall continue to enjoy unmolested the *right* to take fish of every kind" in British-Canadian waters, "where the inhabitants of both countries used at any time heretofore to fish." ‡

(4) Navigation of Mississippi without entrance or exit.

(4) The free navigation of the River Mississippi to Great Britain,—but without any means of entrance or exit for her ships. § Compensation for the Loyal-

\* MSS. Despatches, Oswald to the Foreign Secretary, 7th and 8th October, 1782.

† See "Oswald's proposed boundary line," as indicated on the Map.

‡ One of the grounds upon which the United States claimed the Canadian and Newfoundland Fisheries was "from their having once formed part of the British Empire, in which state they always enjoyed, as fully as the people of Britain themselves, the right of fishing," and that "they were tenants-in-common while united with her, unless, by their own act, they had relinquished their title." Wharton's *Revolutionary Diplomatic Correspondence*, v. 5, p. 91.

§ In a debate on the Treaty, Lord North said : "There seems to be a peculiar mockery in the Article which granted an eternal and free navigation of the Mississippi. Such is the freedom that, where we had not been locally excluded, we have effected our exclusion by Treaty." *Parliamentary History*, v. 23, p. 452.

ists, reversal of confiscations, and payment of American debts to British merchants, were refused, and there-  
upon abandoned by the British Commissioners.\*

Rights  
abandoned.

Lord Shelburne had particularly instructed Mr. Oswald that no independence should be acknowledged without the British Loyalists being indemnified, and their confiscated property restored.† And the French Minister had conceded the justice of these claims by advising the American Commissioners that their views on the subject of the Loyalists were unreasonable.‡ Political bitterness, however, influenced American diplomacy; § and Messrs. Oswald and Vaughan careless of the honour and justice of their nation, approved of the demand that not a foot of British land should be left in America where the Loyalists could find a refuge from political persecution, or a home for their families; and by ultimately ceding a fruitful agricultural territory in the latitude of their homes, which had, up to the Revolution, formed no part of the territory of the original Thirteen Colonies.¶

Lord Shelburne and the French Minister on Loyalist's claims.

Unfaithfulness of Messrs. Oswald and Vaughan.

\* A copy of this Draft Treaty is printed in Sparks's *Diplomatic Correspondence of the Revolution*, v. 10, p. 90.

† *Life of Lord Shelburne*, v. 3, p. 189.

‡ *Ibid*, p. 300.

§ "From motives of humanity I hope she [Great Britain] will not succeed; unless the same feelings of humanity should prompt me to wish all mankind at war with that Nation—for her humiliation—which is, at this time, if ever one was, *hostis humani generis*." John Adams to the President of Congress, 19th March, 1781. Wharton's *Revolutionary Diplomatic Correspondence*, v. 4, p. 315.

¶ "The British wanted to bring their boundary down to the Ohio, and to settle their Loyalists in the Illinois country. We did not choose to have such neighbours." Dr. Franklin to the Secretary of State, 5th December, 1782. The "Illinois country" above referred to, is now the State of Illinois.



U. S. severity  
to Loyalists.

The Loyalists had been treated with undue severity by the American revolutionists, for no crime save fidelity to the lost cause of Great Britain. A graphic statement of their sufferings has been given by a gifted writer, whose sympathies are known to be favourable to the United States :

Professor  
Goldwin  
Smith's  
sketch.

"The first civil war in America was followed, not by amnesty, but by an outpouring of the vengeance of the victors on the fallen. Some Royalists were put to death. Many others were despoiled of all they had, and driven from their country. Massachusetts banished by name 308 of her people, making death the penalty for a second return. New Hampshire proscribed 76 ; Pennsylvania attainted nearly 500 ; Delaware confiscated the property of 46 ; North Carolina, of 65, and of 4 mercantile firms ; Georgia also passed an Act of confiscation ; that of Maryland was still more sweeping. South Carolina divided the Loyalists into four classes, inflicting a different punishment upon each. Of the 59 persons attainted in New York, 3 were married women, guilty probably of nothing but adhering to their husbands, members of the Council, or Law Officers, who were bound in personal honour to be faithful to the Crown. Upon the evacuation of Charleston, as a British Officer who was on the spot stated, the Loyalists were imprisoned, whipped, tarred and feathered, dragged through horse-ponds, and carried about the town with 'Tory' on their breasts. All of them were turned out of their houses and plundered, 24 of them were hanged upon a gallows facing the quay, in sight of the British fleet, with the army and refugees on board."\*

---

\* *United States, an Outline of Political History*, by Goldwin Smith, D.C.L., pp. 110-11.

Judged by their subsequent actions, neither Lord Shelburne, nor any of his colleagues, appears to have realized, until Mr. Jay's draft treaty was before them, the impending *Decensus Averni Politici*, into which they had, partly with their own consent, and partly from want of efficient supervision, allowed the colonial and territorial interests of Great Britain in Canada, to drift, under the unskilful diplomatic pilotage of Messrs. Oswald and Vaughan.

Thus piloted, and surrounded by the darkness of home ignorance of the agricultural wealth, and the undeveloped resources, and apparently indifferent to the future commercial value of the trade, of the coveted Canadian territory, Lord Shelburne's Government, to the astonishment of the European allies of the United States, surrendered to every demand, abandoned the Loyalists and, after losing thirteen British Colonies, in a fit of unintelligible, and—as Great Britain subsequently realized—unappreciated, benevolence, gratuitously made the Thirteen United States a gigantic present of sufficient British and Canadian territory, which British arms had won from France, out of which to create nine additional States;—thus endowing the revolted and lost Colonies with an additional territorial empire of about 415,000 square miles, about equal to the present combined area of Germany and France; and thereby alienizing the British inhabitants which had their homes within its boundaries.\*

Diplomatic  
pilotage of  
Messrs.  
Oswald and  
Vaughan.

Great Britain  
loses 13 colo-  
nies and then  
cedes terri-  
tory sufficient  
for 9 new  
States.

Equal in area  
to Germany  
and France.

---

\* The additional territory gratuitously ceded by Great Britain to the United States, was afterwards, at the dates mentioned, formed into the following States: Kentucky (1792), Tennessee (1796), Ohio (1803), Indiana (1816), Illinois (1818), Alabama (1819), Michigan (1837), Wisconsin (1848), and Minnesota (1858).

The King's  
plaintive  
letter.

When the extravagant generosity of the Draft Treaty was realized, and the tie between the American Colonies and Great Britain was about to be severed, the King plaintively wrote to Lord Shelburne: "I am too much agitated with a fear of sacrificing the interests of my country \* \* that I am unable to add anything on that subject, but most frequent prayers to Heaven to guide me so to act, that posterity may not lay the downfall of this once respectable Empire at my door; and that if ruin should attend the measures that may be adopted, I may not long survive them." \*

Lord Shel-  
burne's warn-  
ing to Mr.  
Oswald.

Lord Shelburne, in writing to Mr. Oswald, evidently felt the peril in which his Government stood, and warned him that "the nation would rise to do itself justice, and to recover its wounded honour." Appar-

Mr. Strachey  
sent to avert  
the impend-  
ing disasters.

ently, with the hope of averting, if possible, the impending national disaster, Mr. (afterwards Sir) Henry Strachey, who had been Secretary to Lord Clive, and was then Under-Secretary for Foreign Affairs, was despatched to Paris with instructions to insist upon compensation to the Loyalists, the retention by Great Britain of the "Indian Territory," and of the original boundaries of Canada within the Ohio and Mississippi; or, if any Canadian territory should be ceded, to charge it with compensation for the Loyalists; to obtain a more favourable boundary of Nova Scotia, and to reject the cession of the Canadian Fisheries. †

Mr. Stra-  
chey's  
courageous  
tenacity.

Mr. Strachey, though coming upon the diplomatic battle-ground late, and single-handed, appears to have fought for his imperilled cause with courageous tenacity, and to have taken a decided stand against some

---

\* *Life of Lord Shelburne*, v. 3, p. 297.

† *Ibid*, p. 281.

of Messrs. Oswald and Vaughan's concessions.\* As stated by an American diplomatist, he "had been sent from England for the purpose of stiffening the easy nature of Mr. Oswald, but he only succeeded in infusing into the Conferences all the asperity which they ever betrayed."† A late equally Anglo-phobe writer declares that, "Mr. Strachey appeared in Paris as the exponent of English arrogance, insolence, and general offensiveness."‡ But his contemporaries were more just: "Mr. Strachey won an acknowledgment from both sides for his persistent energy and skill. Adams said of him, 'He presses every point as far as it can possibly go. He is a most eager, earnest, and pointed spirit.' And Mr. Oswald, in writing to Mr. Secretary Townshend, said, 'He enforced our pretensions by every argument that reason, justice and humanity, could suggest.'"§

Mr. Strachey was too late! Had he sounded the French Minister,—whose policy respecting the United States he must have known,—he might, perhaps, have learned that Congress had withdrawn the claims to the fisheries, and the Mississippi boundaries, as *ultima*; and that M. de Vergennes was ready to use the supervisory influence which Congress had given France, for the purpose of making the American plenipotentiaries more conciliatory.¶ Against him, however, were the betrayals of Cabinet secrets to the Ameri-

Criticisms on  
Mr. Strachey.

But he was  
too late.

Messrs.  
Oswald and  
Vaughan had  
disclosed  
Cabinet sec-  
rets.

\* "Vaughan, regretting the interposition of Strachey, undertook for a second time to represent the American views to the British Ministry." Adams's *Works*, v. 3, p. 312.

† *Life of John Adams*, by J. Q. & C. F. Adams, v. 3, p. 39.

‡ Morse's *John Adams*, American Statesmen Series (1890), p. 218.

§ Winsor's *America*, v. 7, p. 139.

¶ *Ibid*, p. 141.

And approved  
of the cession  
of Canada.

can Commissioners by Messrs. Oswald and Vaughan ; their oft-given approval of the cession of Canada and Nova Scotia ; the consent of the British Ministry to a confinement of the Canadian limits to a small strip of territory along the St. Lawrence River, and the cession of the remainder to the United States.\* He failed, therefore, to reverse Mr. Oswald's cession of the fertile agricultural territory of southern Canada south of the Great Lakes, and in the valley of the Ohio and Mississippi. He also failed to have the Nova Scotia boundary commence at the Penobscot River, but he recovered the territory between the St. John and St. Croix Rivers, making the latter, where it flows into Passamaquoddy Bay, the Atlantic starting point. And, under imperative instructions from the Foreign Office, he regained the portion of the Canadian (now southern Ontario) territory between Mr. Oswald's Lake Nipissing and Mississippi line and the lakes ; and he accepted the present river and lake boundary.†

He gained a  
slight change  
in boundaries.

British Com-  
missioners  
unaware of  
U. S. modifi-  
cation of  
claims to  
Canadian  
shore fisher-  
ies.

Neither Mr. Oswald, nor Mr. Strachey, appears to have been aware of the conditional modification of the claims respecting the fisheries as an *ultimatum* ; nor that Congress had directed their Commissioners to claim the right to take fish "on the banks of Newfoundland and other fisheries in the American seas anywhere, excepting within the distance of three leagues

---

\* MS. Despatch, the Foreign Secretary to Oswald, Whitehall, 1st September, 1782.

† One of the alternative boundary lines proposed was to continue on the 45th degree of north latitude from the point where it crossed the Connecticut River, and thence west to where it would strike the River Mississippi. MS. Despatch, Strachey to the Foreign Secretary, November, 1782. For the Draft Treaty proposing this 45° latitude boundary, see Sparks's *Diplomatic Correspondence of the Revolution*, v. 10, p. 95.



off the shores of the territory remaining to Great Britain at the close of the war, if a nearer distance cannot be obtained by negotiation." \* But, apparently in ignorance of these facts, all Canadian in-shore fishery rights were conceded, without even the suggestion—much less the demand—of a reciprocal concession to Canadians to take fish in American in-shore waters.

Conceded without Canadian reciprocal right to American shore fisheries.

What took place over the fishery clauses of the Treaty has been dramatically related by Mr. Adams's biographer:

American account of the discussion over the fishery clauses.

"Mr. Strachey proposed that the word '*right*' in this connection should be changed to '*liberty*.' Mr. Fitzherbert sustained the movement by remarking that '*right*' was an obnoxious expression. The suggestion seems to have fired Mr. Adams, and immediately he burst into an overwhelming defence of the term he had chosen. He rose, and, with the concentrated power which he possessed when excited, declared that when first commissioned as a negotiator with Great Britain, his country had ordered him to make no peace without a clear acknowledgment of the right of the fishery, and by that direction he would stand. No preliminaries should have his signature without it. And here he appealed with some adroitness to Mr. Laurens, who had been President of the Congress when the first commission was given. Mr. Laurens readily responded to the call, and seconded the proposition with characteristic warmth. And Mr. Jay virtually threw his weight into the scale." †

Suppression of the modified policy of Congress.

---

\* *Secret Journals of Congress*, v. 3, p. 231. See also the report of the Committee of Congress, 8th January, 1782.

† *Life of Adams*, v. 2, p. 44. "The fact seems to be that John Adams was determined to get the use of these fisheries, regardless of

"The stroke  
proved  
decisive."

The biographer of Mr. Adams thereupon paraphrases the sinister maxim "the end justifies the means," by telling us that "the stroke proved decisive;" but he apologizes by adding: "The act was the assumption of another prodigious responsibility."\* And so it was; for the American Commissioners well knew that the earlier policy of Congress as set out in their first commission had been modified, and that the *ultimatum* respecting the Canadian fisheries, which they asserted with such indignant fervour, had been practically withdrawn. And Mr. Jay confirms this by recording: "Had I not violated the instructions of Congress, their dignity would have been in the dust."†

Mr. Jay's  
dmission.

Sarcastic  
letter of the  
French  
Minister.

When the terms of the preliminary Treaty of Independence became known, the French Government at once demanded an explanation from the American Minister. "I am at a loss," sarcastically wrote M. de Vergennes to Dr. Franklin, "to explain your conduct, and that of your colleagues. You have concluded your preliminary articles without communicating with us, although Congress prescribed that nothing should be done without the concurrence of the King. You are wise and discreet, Sir! You perfectly understand what is due to propriety; you have all your life performed duties. I pray you to consider how you propose to fulfil those which are due to the King."‡ He

---

his instructions." Snow's *Treaties and Topics in American Diplomacy*, p. 430.

\* *Life of Adams*, v. 2, p. 45.

† *Life of Jay*, v. 2, p. 105.

‡ Dr. Franklin apologized, and admitted that the French Minister's observations were just: "we have been guilty of neglecting a point of *bienséance*: we hope it will be excused," and that the great work would "not be ruined by a single indiscretion of ours." M.

also instructed the French Minister at Philadelphia to inform the American Secretary of State that the American Commissioners had deceived him, and had been guilty of a gross breach of faith. And in writing to M. de Rayneval, he said: "The English have *bought a peace*, not made one. Their concessions have exceeded anything we believed possible." And the French representative to the United States reported to M. de Vergennes, that the cession of the western Canadian territory to the sources of the Mississippi, had surpassed all expectations, for it gave the Americans four forts that they had found it impossible to capture.\*

The closing letters of Mr. Strachey to the Foreign Office, give a blunt Englishman's opinion of a specialty he discovered in American diplomacy. In reporting to his chief, he said, "The Treaty must be re-written in London in regular form, which we had not time to do in Paris, and several expressions, being too loose, should be tightened. These Americans are the greatest quibblers I ever knew."† Later on he wrote to a colleague: "The Treaty signed and sealed is now sent. I shall set off to-morrow, hoping to arrive on Wednesday, if I am alive. God forbid if I should ever have a hand in such another Peace."‡

de Vergennes accepted the apology. Mr. Secretary Livingston also expressed his personal disapproval of the acts of the Commissioners, adding: "It gives me pain that the character for candor and fidelity to its engagements, which should characterize a great people, should have been impeached." 25th March, 1783.

\* Winsor's *America*, v. 7, p. 158, note 5.

† MS. Letter, Strachey to the Foreign Secretary, Calais, 8th November, 1782.

‡ MS. Letter, Strachey to the Foreign Office, Paris, 30th November, 1782.

Allowable  
strategic  
policy in  
diplomacy.

Whatever strategic policy may be allowable in Treaty-making diplomacy, it should be controlled by the knowledge that the diplomatist represents the conscience and good faith of his Sovereign, and the dignity and honour of his Nation. The skilled diplomatist who possesses the *tact des convenances*, may make legitimate use of argumentative strategy, while combining adroitness with integrity; but ever mindful of the radiant light of his representative station;— combinations of qualities which will win for him a reputation for sagacity, tact and rectitude, and assure to him a recognized supremacy in diplomatic emergencies. Judged by such standards, the reader can say whether this early venture of American diplomacy illustrated the specialty recorded by the British representative; the conduct charged by the French Minister; as well as the sinister diplomatic qualities frankly avowed by American apologists.\*

Reader's  
judgment on  
American  
diplomacy.

Treaty a  
humiliation to  
Canada.

Lord Town-  
shend's opin-  
ion.

The Treaty of 1782 was a humiliation to Canada, in the loss of her territory, in the cession of her fishery rights, and in the uncertainty of her boundaries. Lord Townshend, in the debate on the Treaty, well said: "Why should not some man from Canada, well acquainted with the country, have been thought of

---

\* Sir John Macdonald, writing confidentially to a colleague in 1871, respecting the Protocols on the Treaty of Washington said: "The language put into the mouths of the British Commissioners is strictly correct; but I cannot say as much for that of our American colleagues. They have inserted statements as having been made by them, which in fact were never made, in order that they may have an effect on the Senate. My English colleagues were a good deal surprised at the proposition; but as the statements did not prejudice England, we left them at liberty."—*Life of Sir John A. Macdonald*, by Joseph Pope, v. 2, p. 134.

for the business which Mr. Oswald was sent to negotiate? Dr. Franklin, Mr. Jay, Mr. Laurens, and Mr. Adams, had been an overmatch for him; he either did not know, or appeared ignorant, how the country lay which he had been granting away, as the bargain he had made clearly indicated."\* And a Canadian Lieutenant-Governor reported: "When Mr. Oswald made a peace with the Americans in 1782, he evinced his total ignorance of the country and its true interests, in the line he fixed as the boundary between us." Mr. Oswald's total ignorance of the country.

It has been truly said by American writers: "The bargain with England was struck on the American basis. Considering the only *ultimatum* they were ordered to insist upon, the Americans made a wonderfully good bargain. The United States could, in all reason, ask little more of any nation."† And the diplomatic history of the subsequent treaties proves that the United States have asked for, and have generally struck, further "good bargains" with Great Britain "on the American basis" respecting Canadian territory. Bargain with England "struck on the American basis." Even now efforts are being made by the United States to hold Canadian territory, ‡ and ignore U. S. has obtained other "good bargains" of Canadian territory. Ignores Canada's claims in Alaska.

---

\* *Parliamentary History*, v. 23, p. 391.

† *John Adams* (American Statesmen Series) p. 200. "The great object upon which all American minds were bent, was Peace; and they were agreeably surprised at getting it upon such favourable terms." Winsor's *America*, v. 7, p. 158.

‡ In 1876 the United States directed its Alaska officers to collect duties from Canadian settlers at places on the Stikine river, which were subsequently found to be seven miles within Canada. "It seems remarkable that while that Government has hitherto refused to define the boundary, it should now seek to establish it in accordance with its own views, without any reference to the British authorities, who are equally interested in a just settlement of the international boundary." *Canada Sessional Papers* (1878), No. 125, pp. 63, 66 and 144.



Canada's right to be heard in the Alaska boundary dispute. \*

England endowed the U. S. with "gigantic boundaries on the south, west and north."

And weakened British empire-power in America.

A candid historian of the United States reminds the people of the United States that: "However great the errors committed by England in the American struggle, it must always be remembered to her credit that, in the peace negotiations, Shelburne, declining all temptations to a contrary course, endowed the Republic with the gigantic boundaries on the south, west, and north, which determined its coming power and influence, and its opportunities for good."† But this endowment of "gigantic boundaries" transferred Great Britain's wealth of empire-territory in Canada to the Republic, thereby weakening her empire supremacy, and Canada's sphere of influence, in North America.

---

\* In view of the many efforts of certain newspaper correspondents in the United States to prejudice public opinion against the Canadian Government's action respecting the Alaska boundary, the following historical precedent may be cited: In 1831, when the King of the Netherlands made his Award on the Maine boundary, Mr. Preble, of that State, was American Minister at the Hague, and served the King with a protest against his Award. He sent his despatch and papers to the U. S. Secretary of State by a tedious route, *via* Paris, Brest, and New Orleans, to Washington; while by the more expeditious route, *via* Liverpool and New York, he sent a pressing recommendation to the Governor of Maine, urging that the Legislature should protest, in advance, against any Award by a Foreign Potentate which might in any way affect Maine or deprive her of any portion of the State territory, for the benefit of England. The "State Rights" protest, was thereupon formulated, and successfully aroused public sympathy for Maine, some weeks before the official Award reached the U. S. Government. This *mauvais tour* soon became known to the Government, and caused much embarrassment; but American public opinion had been inflamed, and made hostile to Great Britain in advance; and the President and his political party, being on the eve of a Presidential election, reluctantly rejected the Award: See Grattan's *Civilized America*, v. 1, p. 353.

† Winsor's *America*, v. 7, p. 150.

An equally congratulatory opinion on this endowment of the United States has been expressed by a well-known American commentator on International Law : " It has been frequently said that, of all the Treaties executed by Great Britain, this Treaty was the one in which she gave most and took least. And in view of the fact that Great Britain at that time held New York, Charleston, and Penobscot, and had almost unchecked control of American waters, her surrender—not merely of the entire territory claimed by the Colonists, but of the Indians in that territory whom she had held under her allegiance, of the rights of the Refugees she had pledged herself to protect, and of the Fisheries, in which she conceded to the United States a joint ownership,—presents an instance of apparent sacrifice of Territory, of Authority, of Sovereignty, and of Political Prestige which is unparalleled in the history of Diplomacy." \*

Great Britain  
"gave most  
and took  
least."

British sur-  
render unpar-  
alleled in  
Diplomacy.

The diplomatic correspondence during the early years of this century furnishes materials for a history of the embittered international relations between the United States and Great Britain.—born of the Revolution, matured by the frenzied terrorism of Robespierrian France, and made passionate by the drastic and retaliatory policy which Great Britain was forced to adopt to counteract the effect of Napoleon's Berlin decrees of 1806, prohibiting neutral commerce with the ports deemed closed to British trade; and also in the defence, single-handed, of her island-shores from a threatened invasion by her bitter and war-trained enemies and in maintaining her supremacy as a Sea Power. Her estranged American kindred showed no consideration

Diplomatic  
correspon-  
dence since  
Revolution,  
shows embittered rela-  
tions.

\* Wharton's *History and Digest of International Law*, v. 3, p. 467.

No consideration for Great Britain's emergent necessities during Napoleon's wars. for the cruciate and emergent necessities of their then isolated, but domineering, old Motherland; whose foreign and sea policies they then passionately denounced, but which they have since admitted were justified by International Law, as being "necessary measures of self-defence, to which all private rights must give way." \*

Difficult to harmonize U.S. policy in construction of treaties.

There is much also in that correspondence, and also in the correspondence respecting the subsequent Treaties suggested, agreed to, and rejected, which make it difficult to harmonize the policy and the arguments of the United States in their diplomatic discussions, as well as in their one-sided interpretation of their Treaties, with Great Britain.†

Case of the Mississippi boundary line.

The Treaties of 1782-83 had assumed that the boundary line on a "due west course" from the Lake of the Woods, would strike the Mississippi (for all the proposed boundary lines converged to that river), and thence down the middle of that river to latitude 31°. By Mr. Jay's Treaty of 1794, the uncertainty of the "due west course" was admitted; and it was there agreed that the boundary line should be adjusted "in conformity to the intent of the Treaty of Peace." It was subsequently admitted that the head waters of

Uncertainty admitted in 1794.

---

\* Moore's *History and Digest of International Arbitrations* (1898), v. 1, p. 841. Lord Stowell held that the British orders of blockade were resorted to as a defence against the injustice and violence of the French; and that they were justly reconcilable with those rules of national justice by which the international actions of independent States were usually governed. See his judgments in 1 Dodson's Reports, 133; and Edwards's Reports, 314 and 382.

† In one case the United States contended that Great Britain intended to abandon the right of visitation because no mention of it was made in the slave trade clause. But on a claim by Great Britain to hold a certain boundary they contended that the words describing it in the Treaty, must govern. Grattan's *Civilized America*, v. 1, p. 414.

the Mississippi were not "due west," but almost eighty miles directly south of the Lake of the Woods.\*

Under the doctrine of *falsa demonstratio non nocet*, it is a well recognized rule of law that, where natural and permanent objects are designated or described in a patent, or deed, as connected by a line on a certain course, or distance, which is found to be erroneous, both course and distance must yield to the dominant control of the natural objects, in order to give full effect to the act or deed of the parties.† And the Supreme Court of the United States has formulated another doctrine, that Treaties ceding territory to the United States are to be construed most favourably to the ceding power,‡—which in this case was Great Britain.

Legal doctrine applicable

How U. S. should construe Treaties.

In 1802 the United States, in a despatch reciting the erroneous description of the "due west" Mississippi line in the Treaty of 1783, proposed the following rectification:—"It is now well understood that the highest source of the Mississippi does not touch any part of the Lake of the Woods. To remedy this error it may be agreed that the boundary of the United States, in that quarter, shall be a line running from that source of the Mississippi which is nearest to the Lake of the Woods, and striking it westerly at a tangent, and, from the point touched, along the water-mark of the lake to its most north-western point, at which it will meet the line running through the lake."§

U. S. agreed to rectify mistake.

Line from Mississippi to Lake of the Woods.

---

\* Bancroft's *History of the North-West Coast*, v. 2, p. 320.

† "The extent of the mischief which would result from unsettling this principle cannot be conceived." *Per* Marshall, C. J., in *Newsom v. Pryor*, 7 Wheaton's Reports 7.

‡ *United States v. Arredondo*, 6 Peter's Reports 691.

§ *American State Papers, Foreign Affairs*, v. 2, p. 585.

Treaty of  
1803 settled  
the Mississip-  
pi boundary.

Under these instructions, a Treaty was signed in London on the 12th May, 1803, in which it was agreed that, instead of the boundary line in the Treaty of 1783, it should be "the shortest line which can be drawn between the north-west point of the Lake of the Woods and the nearest source of the Mississippi."\*

Rejected by  
U. S. Senate.

But, although the initiative for this Treaty had been taken by the United States, the Senate declined to ratify it unless the clause settling the boundary line was struck out,—the reason given being that the United States had then acquired the French rights in Louisiana. †

Conciliatory  
policy of  
Great Britain  
on marine  
jurisdiction,  
1806.

The conciliatory policy of Great Britain towards the United States may be further illustrated by the exceptionally liberal rule as to marginal jurisdiction on the High Seas, contained in an unratified Treaty of 1806. Owing to the capture by British war vessels, on the coasts of the United States, of the ships of the European nations with which Great Britain was then at war, the United States proposed that it would not be unreasonable, considering the extent of the United States, the shoalness of their coast, and for other reasons, that the neutral immunity from belligerent acts should extend to at least one league from the shore, or should correspond with the claims of Great Britain around her own coasts; and quoted the Hovering Act of 1736, 9 Geo. II. ch. 35, extending the jurisdiction respecting smuggling to four leagues. ‡ The Admiralty and Law Officers of the Crown advised against conced-

U.S.  
proposal  
of neutral  
coast  
immunity.

---

\* The Treaty was signed by Rufus King and Lord Hawkesbury.

† *Treaties and Conventions between the United States and Other Powers*, p. 1016.

‡ Mr. Madison to Messrs. Munroe and Pinckney, 17th May, 1806, and 3rd February, 1807.



ing more than the usual three marine miles; but the British Government, desirous of giving "a strong proof of a conciliatory disposition in their government towards the government and people of the United States,"\* yielded to the proposal of the United States by extending the neutral coast immunity from three to five marine miles in the following article:—(12) <sup>Extended by Great Britain from 3 to 5 marine miles.</sup>

"And whereas it is expedient to make special provisions respecting the maritime jurisdiction of the High Contracting Parties on the coast of their respective possessions in North America, on account of peculiar circumstances applicable to those coasts, it is agreed that in all cases where one of the said High Contracting Parties shall be engaged in war, and the other shall be at peace, the Belligerent Power shall not stop the vessels of the Neutral Power, or the unarmed vessels of other nations, within five marine miles from the shore belonging to the said neutral power on the American seas." The Treaty was never submitted to the Senate <sup>Treaty never ratified by U. S.</sup> for consideration or approval. †

The war of 1812 originated with the United States <sup>Origin of the War of 1812.</sup> mainly because of the retaliatory measures adopted by Great Britain to counteract the Berlin decrees of Napoleon. During the two years it continued, the United States suffered more severely than Canada. The British forces and Canadian militia captured and held possession of a portion of Maine to the Penobscot <sup>British conquests on the east.</sup> River, including the disputed Maine boundary territory

---

\* Messrs. Munroe and Pinckney to Mr. Madison, 3rd January, 1807.

† "The Treaty, not including an article relating to impressments, the British Commissioners should be candidly apprised of the reason for not expecting a ratification." *American State Papers, Foreign Relations*, v. 3, pp. 145 and 154.

- And west to  
Mississippi. on the east; and, on the west, nearly all of Michigan, including the fort of Michilimakanac, and other portions of the former Canadian territory (including what is now Chicago) to Prairie du Chien, on the River Mississippi, which had been won back from the United States in fair fight, and a large extent of which, at the close of the war, was held by right of conquest.\*
- U. S. had no  
conquest in  
Canada. At the same time, the United States had not even a sentry on Canadian territory.
- Great Britain  
aware of the  
east and west  
boundary  
disputes. The British Government had long been aware of the unsettled disputes with the United States respecting both the north-eastern (or Maine), and the north-western (or Mississippi), boundaries, and of the undue bitterness previously imported into the diplomatic discussions with the United States. In 1814, Great Britain was then free from the continental wars. Napoleon had abdicated, and had retired to Elba. The American Secretary instructed the plenipotentiaries for the United States that it was "important to the United States to make peace," and that "the great and unforeseen change of circumstances, particularly the prospect of a more durable state of peace between Great Britain and the Continental Powers of Europe,
- U. S. change  
of *ultimatum*.

---

\* "Without a blow struck, part of Massachusetts (Maine) passed under the British yoke, and so remained, without the least resistance until restored at the Peace. Two frontier fortresses, Michilimacinac and Fort Niagara, were surprised, captured, and forcibly held by the enemy [British] during the war; and parts of Maryland and Virginia were overrun." *Ingersoll's Second War between the United States and Great Britain*, v. 1, pt. 2, p. 116. "For a time the County of Washington in Maine (lying between the Penobscot River and Passamaquoddy Bay) came under British authority. It was a most important surrender. The County of Washington embraced one hundred miles of sea coast, and formed the territory adjoining New Brunswick." *Kingsford's History of Canada*, v. 8, p. 528.

and of security to our maritime rights, justify the change of our *ultimatum*." But notwithstanding this leverage of international peace, and Great Britain's war conquests, her historic generosity restored, unconditionally, all the conquered territories to the United States, as a peace offering, by the Treaty of Ghent; and she was subsequently rewarded with a vexatious diplomatic controversy about, and an armed invasion of, the formerly captured, and long-time disputed, territory between Canada and Maine.\*

The war of 1812 abrogated the fishery rights conceded to the United States, as well as the paper rights of navigation of the Mississippi River (previously described), conceded to Great Britain, by the Treaties of 1782 and 1783.† But by the Treaty of 1818, Great Britain again conceded fishery privileges on certain coasts of Newfoundland, Labrador and Canada, to the United States. And although the United States renounced, forever, the liberty to fish within three marine miles of any of the coasts, bays, creeks or har-

Great Britain's peace offering in 1814.

Her reward.

Rights abrogated by war of 1812.

Great Britain in 1818 concedes fishing rights to U.S.

---

\* Many of the international difficulties over the Maine boundary were caused by the actions of the State authorities, and not by those of the Federal Government. See *North American Boundary Papers*, (Imp.) B, (1838) Appendix.

† "Logically war implies the cessation of existing intercourse, and therefore a right on the part of a State to expel or otherwise treat as enemies, the subjects of an enemy-state found within its territory." Hall's *International Law*, p. 327. "War puts every individual of the respective Governments, as well as the Governments themselves, in a state of hostility with each other. All Treaties contracts, and rights of property are suspended. The subjects of the state are in all respects treated as enemies. They may seize the persons and property of each other. They have no *persona standi in judicio*, no power to sue in the public courts of the enemy nation." Wharton's *Digest of International Law*, v. 3, p. 242. See also *British and Foreign State Papers*, v. 7, pp. 79-97.

Irritating  
charges  
against  
Canada.

Great Britain  
and Canada's  
efforts to  
settle with  
U. S.

U. S. Tariff  
is the real  
difficulty.

Canada's  
trade  
policy, and

bours, not included in the specified British-Canadian waters, there have been irritating charges of "preposterous" interpretations of the Treaty, and of "brutal" enforcements of Canadian rights respecting such renounced fisheries, which have introduced much political acerbity into the diplomatic discussions between Great Britain and the United States.\* The Reciprocity Treaty of 1854; the Washington Treaty of 1871; and the unratified Treaties of 1869, 1874 and 1888, and offers of reciprocity in Canadian Customs laws, besides other proposals to negotiate, may, however, be cited as showing that Great Britain and Canada have earnestly, and persistently, offered to settle these and other disputes in a spirit of mutual compromise and fair bargaining. But though Treaty settlements have been agreed to by leading American diplomatists, they have not been approved by the Senate of the United States. It is now generally conceded that, in this unneighbourly policy on the part of the United States, the real difficulty in the way of a settlement of the Canadian Fisheries controversy on broad lines, is the tariff system of the United States; and that, until that is modified, there can be little hope of a satisfactory settlement.†

In 1854, when the generation of the children of the actors in the early Revolutionary times had almost passed away, and a generation imbued with the national

---

\* Isham's *Fishery Question* (1887), pp. 73-4. The Treaty cautiously provides that the privileges of fishing shall be under such restrictions as may be necessary to prevent American fishermen taking, drying, or curing, fish in the Canadian bays or harbours, or in any other manner abusing the privileges reserved to them.

† *Treaties and Topics in American Diplomacy*, by Freeman Snow, LL.D., p. 468. "It is not at all clear that the Fisheries difficulty can as well be met by Retaliation on Canada, as by a Revision of our own Tariff." Isham's *Fishery Question*, p. 78.

characteristic of bargaining and bartering, held sway, the Reciprocity Treaty of 1854. Lord Elgin and Mr. (afterwards Sir) Francis Hincks, on behalf of Canada, initiated better trade relations, and arranged the Reciprocity, or "give and take," Treaty; to continue in force for ten years, and further, until a year's notice to terminate it should be given by either party. Under it, the United States obtained the liberty of fishing in the Canadian in-shore fisheries, and of navigating the River St. Lawrence; and Canada obtained the liberty of fishing in the American in-shore fisheries north of latitude 36°, and of navigating Lake Michigan. Reciprocal free import and free export of certain natural productions were also conceded to each nation. But during the Civil War of 1861-65, the sympathy of very limited portions of the British and Canadian communities with the South, was assumed by the Northern States to be universal; and the escape of the *Alabama*, and other privateers, from British waters, rekindled,—“in the hour of peril and adversity, when feelings are most keen,”—the almost forgotten embittered relations of the earlier years of the century; and in a spirit of retaliation, the United States gave the notice which put an end to the Reciprocity Treaty in 1866.

The Washington Treaty of 1871 admitted Great Britain's liability for the *Alabama* claims, and provided for an Arbitration to settle the damages subsequently awarded and paid; adjusted the Canadian Fishery Question on the basis of compensation for a ten years' purchase; conceded to the United States the free navigation of the St. Lawrence up to latitude 45° for ever; while the United States conceded to Canada for only ten years, the free navigation of Lake



Great  
Britain's  
rights on  
Alaska rivers  
under Russian  
Treaty of  
1825.

Michigan. It also assumed to give to Great Britain a right to the free navigation of the Yukon, Porcupine and Stikene rivers in Alaska,—a right which Great Britain then possessed under the Treaty with Russia of 1825, which provided that “the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the ocean or from the interior of the continent, *shall forever* enjoy the right of navigating freely, and without any hindrance whatever, all the rivers and streams [in Alaska] which, in their course towards the Pacific Ocean, may cross the line of demarcation.”\* (Art. 6.)

By the same Treaty it was further agreed that

---

\* The above had become part of the International Law of Alaska, when that territory was ceded to the United States. “Treaties, as well as statutes, are the law of the land, both the one and the other, when not inconsistent with the Constitution, standing on the same level and being of equal force and validity.” *Opinions of U. S. Attorneys-General*, v. 13, p. 354. The treaty of cession of 1867 recited the Anglo-Russian Treaty of 1825, and the boundaries of the strip of Russian territory delineated therein, and ceded to the United States “all the territory and dominion *now possessed* by His Majesty on the continent of America.” The following observations respecting British claims when Louisiana was ceded to the United States also apply: “Therefore with the rights acquired in 1819, the United States necessarily succeeded to the limitations by which they were defined, and the obligations under which they were to be exercised. From these obligations and limitations, as contracted towards Great Britain, Great Britain cannot be expected gratuitously to release those countries merely because the rights of the party originally bound have been transferred to a third Power.” Bancroft’s *History of the North-West Coast*, v. 2, p. 372. “Or, as Mr. Gallatin put the British claim, ‘the United States cannot claim under their Treaty with Spain, any greater right than Spain then had,’ *Ibid*, note 23, “An alliance between two nations cannot absolve either from the obligations of previous treaties with third Powers.” Wharton’s *Digest of International Law*, v. 1, p. 18.

each nation should, for ten years, have the right of free importation of fish, and fish oil, except fresh water fish; the free navigation of their respective canals, and the privilege of the transit of goods in bond, or a reciprocal carrying trade; but with the one-sided stipulation that the United States should have the right to suspend the privileges granted to British subjects "in case the Dominion of Canada should deprive the citizens of the United States of the use of the canals of the Dominion on the terms of equality with the inhabitants of the Dominion." A co-ordinate right to suspend the privileges of the carrying trade conceded to the United States, in case one of the States similarly acted, was not allowed to Great Britain or Canada. The fishery clauses, and some other provisions in this Treaty, were abrogated by the United States in 1885.

Reciprocity in fish, and fish oil, canals, and carrying trade.

One-sided condition against Canada.

Fishery clauses abrogated by U. S.

When the Treaty was about to be negotiated, the British Government was urged that the claims of Canada against the United States, arising out of the Fenian Raids into Canada, should also be adjusted;—alleging stronger grounds of "negligence and want of due diligence" against the United States, than those charged by that Government against Great Britain in the *Alabama* case. The Imperial Government assented; but owing to the indefinite phraseology of the British Minister's communication proposing the negotiations for a Treaty, the High Commissioners for the United States refused to consider the Canadian claims, alleging that they did not regard them as coming within the class of subjects indicated in the communication of the British Minister; and curtly adding that "the claims did not commend themselves

Fenian claims of Canada against the U. S. rejected in 1871.

U. S. reason therefor.

to their favour." To this denial of international justice to Canada, the British Commissioners submitted, and stated that "under these circumstances they would not urge further that the settlement of these claims should be included in the Treaty." The reply of the Colonial Secretary to the Canadian protest against the ruling out of these Fenian claims, was equally curt: "Canada could not reasonably expect that this country should, for an indefinite period, incur the constant risk of serious misunderstanding with the United States."\*

Curt reply to Canada by Colonial Secretary.

Unfriendly policy of U. S. under the Washington Treaty.

The unfriendly treatment of Canada by the United States may be illustrated by their actions in carrying out that Treaty. Article 21 provided that fish and fish oil should be admitted free of duty into either country. After the Treaty had been four years in operation, Congress passed a law that "Cans or packages made of tin, or other material, containing fish of any kind admitted free of duty under any law or treaty," should be charged with a specific duty,†—though it was well known that the tins, when opened, could not be used again. The duty practically prohibited the exportation of fish from Canada, and rendered the above provision of the Treaty nugatory.‡

U. S. imposes a duty on fish cans.

Canadian vessels stopped.

U. S. vessels pass free.

Article 27 conceded to each nation the reciprocal use of their respective canals. American vessels with cargoes were permitted to pass through all the Canadian canals, and the St. Lawrence River. But Canadian vessels with cargoes were stopped at the

---

\* Despatch, Earl of Kimberley to the Governor-General, 17th June, 1871. The Fenian Raids had cost Canada over \$1,605,000.

† *United States Statutes at Large* (1875), v. 18, p. 308.

‡ Despatch, Sir E. Thornton to the Earl of Derby, 19th April, 1875.

junction of the American canals with the water-way, and had either to return to Canada, or tranship their cargoes into American vessels.\*

In 1874, Canada's further efforts to promote friendly Canada's and reciprocal trade relations with the United States efforts to promote friendly relations with U. S., 1874. resulted in a Draft Treaty being settled by the late Sir E. Thornton and the late Hon. George Brown, on behalf of Great Britain, and the late Hon. Hamilton Fish, on behalf of the United States. It provided for (1) The Concedes concession to the United States of the Canadian in-fishery shore fisheries for twenty-one years, and the aban-rights, and donment of the compensation provisions of the Wash-abandons ington Treaty of 1871. (2) The reciprocal admission, duty free, of certain natural products. (3) The recip- compensation rocal admission, duty free, of certain manufactured therefor. articles. (4) The enlargement by Canada of the St. Lawrence and Welland Canals. (5) The construction Other provisions for of the Caughnawaga and Whitehall Canals. (6) The reciprocity. reciprocal right of each nation to the coasting trade of the St. Lawrence and the Great Lakes. (7) The reciprocal right of each nation to the use of the Canadian, New York and Michigan Canals. (8) The reciprocal admission of the ships of each nation to registry. (9) A joint commission to secure efficient lighthouses along the inland waters. (10) A joint commission to Brown-regulate fishing in the inland waters common to both Thornton countries. The draft treaty was accepted by Great Treaty reject- ed by U. S. Britain and Canada, but was rejected by the Senate of the United States.

---

\* *Canada Sessional Papers* (1876), No. 111. Subsequently the prohibition was relaxed to the extent of allowing Canadian vessels to proceed as far as Albany, on the Hudson River.

Canada in 1888 again offers a friendly policy to the U. S.

Joint Commission to delimit bays, etc.

Rules respecting three-mile limit.

Strait of Canso to be free to U. S.

Again, in 1888, by another effort to settle the Fishery and other disputes, a Treaty was signed by the Right Hon. Joseph Chamberlain, M.P., Sir L. Sackville-West, and Sir Charles Tupper, on behalf of Great Britain and Canada, and the Hons. Thomas F. Bayard, William L. Putnam, and James B. Angell, on behalf of the United States, which provided: (1) That a joint Commission should be appointed to delimit the bays, creeks, and harbours in which the United States had, in 1818, renounced the liberty to fish. (2) That the three marine mile limit, mentioned in that Treaty, should be measured seaward from low-water mark, and that at bays, creeks and harbours, not otherwise specially provided for in this Treaty, such three marine miles should be measured, seaward, from a straight line drawn across such bay, etc., in the part nearest the entrance, where the width did not exceed ten marine miles.\* (3) That in certain specially named bays, etc., the three mile limit should be measured from, and to, specially named points. (4) That the Strait of Canso should be free to all United States fishing vessels. (5) That United States fishing vessels should comply with the usual harbour regulations, but not be bound to report, etc., nor liable for certain specified charges, and should be entitled to certain specified privileges. (6) That certain rules should apply to cases of forfeiture for violation of the fishery laws; and that judgments of forfeiture should be reviewable by the Governor-General. (7) That when the United States should

---

\* By the Anglo-French Treaty of 1839, and the Anglo-German Treaty of 1868, bays, inlets and indentations of the coasts of each nation, of the width of ten nautical miles at their entrance, measured from headland to headland, were declared to be territorial, or inland, and closed seas.



remove the duty on Canadian fish oils, and fish, and the coverings for the same, the like products should be admitted free into Canada; and United States fishing vessels should be free to enter Canadian ports to purchase provisions, bait, etc., and to trans-ship catch, ship crews, and have other specified privileges. (8) That Canadian fishing vessels should have on the Atlantic coasts of the United States, all the privileges reserved by the Treaty to United States fishing vessels in Canadian waters. An *interim modus vivendi* was agreed to, pending the ratification of the Treaty. Canada adopted the Treaty;\* but the Senate of the United States declined to ratify it.

When imports of fish and fish oil to be free.

U. S. fishing vessels free to enter Canadian ports.

U. S. Senate rejected the Treaty.

Great Britain's diplomatic policy towards the United States has, for many years, been eminently one of conciliation and generosity, with a leaning towards an easy optimism, or *laissez nous faire*, at the expense of Canada's territory. Notwithstanding Jay's Treaty of 1794, and the agreement in the unratified Treaty of 1803, previously mentioned,—by the Treaty of 1818, Great Britain ceded to the United States the Canadian territory situated between the head waters of the Mississippi and latitude 49°.† By not consulting the reports of Canadian officers, an isolated north-western promontory of about 10,000 acres in the Lake of the

Great Britain's generosity to the U. S.

Ceding Canadian territory.

---

\* *Statutes of Canada* (1888), 51 Victoria, c. 30.

† The Plenipotentiaries of the United States reported to Congress, on the 14th December, 1782, that Great Britain possessed the country on the Mississippi River to the Lake of the Woods. Sparks's *Diplomatic Correspondence*, v. 10, p. 119. "About four millions of acres to the west of Lake Superior, being a tract which had always been claimed by Great Britain, went to satisfy the thrifty appetite of the Republic." *Canada since the Union of 1841*, by J. C. Dent, v. 1, p. 205.

Cession at the Woods, twenty-six miles north of the nearest territory of the United States on the international boundary line of  $49^{\circ}$ , was cut off from Canadian territory, and ceded to the United States, by the same Treaty.

Cessions of Canadian territory to the U. S. By the Ashburton Treaty of 1842, about 4,489,600 acres of Canadian lands were transferred to the United States, which the concealed "Franklin's Red Line Map," of 1782, would have sustained Great Britain's claim to. By the same Treaty the boundary line described in the Treaties of 1782, 1783, and 1814, was abandoned, and a strip of Canadian territory, lying between the Connecticut and St. Lawrence rivers—

Revocation of boundary in Treaties of 1782, 1783 and 1814. over 150 miles in length,—was alienated from Canada, and ceded to the United States, by moving the original treaty line of latitude  $45^{\circ}$  north, about three-quarters of a mile, into Canada, increasing to a mile and a half, and then sloping to the true astronomical latitude of  $45^{\circ}$  at the St. Lawrence River,—because the United States desired to retain the town of Rouse's Point, in which they had, improvidently, but for hostile purposes, built Fort Chamblee.\* Owing to incompleteness in the Joint Commissioners' description of the boundary line of 1822, "a large island in dispute in the passage between Lake Huron and Lake Superior, known as St. George's or Sugar Island, was given to the United States,"† by the same Treaty.

Cession of Rouse's Point to U. S.

---

\* The treaty line of 1814 was removed into Canada 4,326 feet north of the true latitude of  $45^{\circ}$  at Rouse's Point. Winsor's *America*, v. 7, p. 180. The Award of the King of the Netherlands had recommended that the treaty line of  $45^{\circ}$  should be adhered to, but that Great Britain should cede to the United States a semicircular piece of territory, with the fort. *North American Boundary Papers* (Imp.), 1838, Appendix, pp. 7-15.

† Winsor's *America*, v. 7, p. 180.

In 1846, when the little islanders and anti-colonials had chloroformed the Imperialists, the diplomatic leverage of the United States pried Great Britain and Canada out of several millions of acres in the Oregon territory, together with their British settlers and traders, and a sea coast of about six degrees of latitude on the Pacific Ocean, with good harbours for naval stations.\* And by Great Britain agreeing to limit, at the instance of the United States, the scope of the reference to the German Emperor in 1871, to only two of the Vancouver channels, Canada was arbitrated out of the Island of San Juan.†

Canada loses  
the Oregon  
territory.

And Island of  
San Juan.

Many diplomatic discussions have taken place about the boundary lines drawn on Maps during the negotiations for the Treaty of Independence. Mitchell's map of North America (1755) is admitted to have been the one used by the plenipotentiaries. Both groups of Commissioners appear to have drawn boundary lines on the maps sent to their respective Governments. Mr. Oswald transmitted one on the 8th October, 1782, which is said to be still in the Public Record Office in London, and has a faint red line drawn on it, between

Boundary  
lines drawn  
on Maps  
in 1782.

Oswald's  
Map.

---

\* Lord Ashburton appears to have imitated Mr. Oswald, in both disparaging and ceding Canadian territory; for in a conversation respecting the Maine boundary dispute in 1843, he stated that "the whole territory we were wrangling about was worth nothing." Greville's *Memoirs*, Part 2, v. 1, p. 469. And subsequently, in a debate, in 1846, on the question of Great Britain's right to the Oregon territory, he said it was "a question worthless in itself," and that it would be madness to go to war for "nothing but a mere question of honour." *Hansard's Debates*, v. 84, p. 1119.

† An unratified Treaty of 1869 for the settlement of this boundary, contained no limitations. Moore's *History and Digest of International Arbitrations*, v. 1, pp. 223-31.

Strachey's  
Map.

"The King's  
Map."

Boundary  
lines of  
American  
Plenipoten-  
tiaries.

President  
Adams's evi-  
dence, 1797.

Mr. Jay's  
evidence.

Canada and Maine.\* Mr. Strachey transmitted another map † showing three proposed lines: (1) the Nipissing-Mississippi line, originally accepted by Mr. Oswald; (2) the 45° latitude line, from the Connecticut River direct to the Mississippi; and (3) the present river and lake line to the Lake of the Woods, and thence to the Mississippi — which latter was the boundary line accepted by the Foreign Office.‡ This line appears to have been subsequently traced on a map by King George III., who wrote along the line the words "Boundary as described by Mr. Oswald."§ This map is now in the British Museum, and is known as the "King's Map."

In one of Mr. Oswald's despatches to the Foreign Office, he reported that the American Plenipotentiaries had obtained from London "a complete set of the best and largest maps of North America." And it is a matter of history that the Plenipotentiaries transmitted maps with marked boundary lines to their Government. President John Adams, one of the Plenipotentiaries of 1782, when examined in 1797, before the Joint Commissioners appointed under Jay's Treaty of 1794, stated: "Lines were marked at that time, as designating the boundaries of the United States upon Mitchell's Map." Mr. Jay, another of the Plenipotentiaries, was also examined, and stated that "certain

---

\* This map, known as "Oswald's Map," was subsequently referred to by Lord Palmerston as "the red-lined map showing the boundary as claimed by Great Britain." See also Winsor's *America*, v. 7, p. 181.

† MS. Despatch, Strachey to the Foreign Office, November, 1782.

‡ MS. Despatch, The Foreign Secretary to Messrs. Oswald and Strachey, Whitehall, 19th November, 1782.

§ Lord Brougham identified the handwriting as that of King George III.

lines were marked on the copy of Mitchell's map which was before them at Paris."\* And in the Boston Monthly Magazine, for 1826, it was stated that copies of Mitchell's maps "with lines in pencil, hardly obliterated, were then in the Department of State in Washington." But about 1828, or a year before the "Statement on the part of the United States," respecting the Maine boundary was submitted to the King of the Netherlands, all of these maps "had mysteriously disappeared from the American Archives, and were nowhere to be found;"—for the maps there now have no marks.†

In Dr. Franklin's published letters there is one to Mr. Jefferson, dated April, 1790, in which he also stated that "the map we used in tracing the boundary" was one of Mitchell's; and he added: "Having a copy of that map before me in loose sheets, I send you the sheet where you will see that part of the boundary traced."‡

This map was produced to the Senate during the debate on the Ashburton Treaty, and was declared by the Chairman of the Committee on Foreign Relations (after comparing it with the Franklin Red Line Map), to sustain in every feature the map obtained in Paris by Dr. Sparks; but it also has since disappeared.§

Maps in U. S. State Department, 1826.

Their mysterious disappearance in 1828.

Dr. Franklin's Map sustained "Red Line Map."

It also has disappeared.

---

\* Moore's *History and Digest of International Arbitrations*, v. 1, pp. 19 and 21.

† The statement of the disappearance of the marked maps of 1782 was made by Mr. Forsyth, then Secretary of State, to Mr. Grattan, British Consul at Boston. See Grattan's *Civilized America*, v. 1, pp. 371 and 436. Their disappearance from the U. S. Department of State, is also confirmed by Winsor's *America*, v. 7, p. 181.

‡ *Life and Letters of Franklin*, by John Bigelow, v. 3, p. 462.

§ "There is no knowledge or recollection in the Department of State of the map sent by Franklin to Jefferson in April, 1790." Moore's *History and Digest of International Arbitrations* (1898), v. 1, p. 157.



Dr. Sparks's  
discovery of  
Franklin's  
"Red Line  
Map" of  
1782.

Dr. Franklin's  
letter to the  
French  
Minister.

Map and  
letter sent to  
Mr. Webster.

Evidence of  
British claim.

But the map which furnished the best evidence in support of the British-Canadian claim respecting the Maine boundary, was discovered by Dr. Jared Sparks, of Harvard University, in the French Archives in 1842. He first discovered the following letter from Dr. Franklin to M. de Vergennes, dated Passy, December 6th, 1782—written six days after the preliminary treaty had been signed: "I have the honour of returning herewith the map Your Excellency sent me yesterday. I have marked with a strong Red Line, according to your desire, the limits of the United States as settled in the preliminaries between the British and American Plenipotentiaries."\* The map which accompanied this letter was found among several thousands in the Archives, with a strongly marked "red line." Dr. Sparks, who was familiar with the Maine boundary dispute, sent a copy of the map, and of Dr. Franklin's letter, to Mr. Webster, then Secretary of State.† Lord Ashburton subsequently produced to Mr. Webster a map disclosing a similar boundary line;‡ but it was not accepted as evidence by the United States; although Mr. Webster then had the Franklin "Red-Line Map" and letter, which could have been claimed by Lord Ashburton, had he been

---

\* Wharton's *Revolutionary Diplomatic Correspondence*, v. 6, p. 120.

† Winsor's *America*, v. 7, p. 180. Webster's *Works*, v. 2, p. 143.

‡ Probably the "Oswald Map," for it is said that Lord Ashburton was not then aware of the existence of the "King's Map." There was said to have been found in the Public Record Office in London, a Mitchell map of 1755, on which was traced a faint red line which supported the British claim, and was assumed to be the "Oswald Map." See Winsor's *America*, v. 7, p. 181.

aware of their existence, as corroborative evidence of the British claim.\*

Dr. Sparks, in reporting to the Senate Committee on Foreign Relations, stated that after discovering the letter, he made further searches and "came upon a map of North America, by D'Anville, dated 1746, in size about eighteen inches square, on which was drawn a *strong red line* throughout the entire boundary of the United States, answering precisely Franklin's description. The line is bold and distinct in every part, made with red ink, and apparently drawn with a hair pencil, or a pen with a blunt point.".....*"In short it is exactly the line now contended for by Great Britain,—except that it concedes more than is claimed."*† He subsequently deposited in the Library of Harvard University a tracing of the red-line map, and also a modern printed map of Maine on which he traced lines dividing the water-shed along the southerly highlands to the monument on the present western boundary. To this he added the following certificate: "The broad black line on the annexed map corresponds with the *Red Line* drawn by Franklin on the map deposited in the *Archives des Affaires Etrangères*, at Paris."‡

Dr. Sparks's  
report to  
Congress.

"Red Line  
Map" sus-  
tained British  
claim.

Copies in  
Harvard  
Library.

Dr. Sparks's  
certificate.

---

\* "Lord Ashburton told me it was very fortunate that this Map and Letter did not turn up in the course of his negotiation, for if they had there would have been no Treaty at all. Nothing, he said, would ever have induced the Americans to accept the line, and admit our claim; and with the evidence in our favour, it would have been impossible for us to concede what we did, or anything like it." Greville's *Memoirs of the Reign of Queen Victoria*, Part 2, v. 1, p. 469.

† See *Senate Debates*, 17th-19th August, 1842.

‡ The original Franklin "Red Line Map," as well as the original letter of Dr. Franklin enclosing it to M. de Vergennes, have also mysteriously disappeared from the French Archives at Paris. "It

French Map  
of 1783 agrees  
with the  
"Red Line"  
Map.

Another French map, published in Paris in 1784, entitled "*Carte des Etats Unis de L' Amerique, suivant le traité de Paix de 1783*," and dedicated to Dr. Franklin, gives a boundary line corresponding in every respect with the "red line" on Dr. Franklin's map. The presumption is irresistible that the boundary line printed on this map, must have been either furnished to the publisher by Dr. Franklin, or copied from the map transmitted by Dr. Franklin to M. de Vergennes. These maps were produced before the United States Senate, to secure its consent to the Ashburton Treaty.\*

Maps used to  
secure assent  
of U. S.  
Senate.

Lord Ash-  
burton not  
aware of cer-  
tain Maps.

Mr. Web-  
ster's caution  
to Mr.  
Everett.

Neither Lord Ashburton, nor the British Foreign Office, appears to have known of any of these Franklin maps; and it is a matter of history that "Mr. Webster was anxious lest the English Government should obtain a knowledge of the Franklin map, for he cautioned Mr. Everett, the American Minister in England, against searching for maps, in England or elsewhere;—evidently in fear that Dr. Sparks's traces could be found."† Subsequently, in 1843, he defended his

---

is a strange thing that neither letter nor map are now to be found at Paris, at least we have hitherto failed in doing so. But we have found *another map* altogether in favour of the American claim. I will tell you the particulars of this curious affair when we meet." Lord Aberdeen to Mr. J. W. Croker, 25th February, 1843, quoted in Wharton's *Digest of International Law*, v. 2, pp. 178 and 179. Copies of Dr. Sparks's maps were, by the courteous permission of the late Dr. Winsor, obtained by the author from the Harvard University Library.

\* The assent of Maine and Massachusetts was obtained by the payment of \$300,000 for their expenses in sending the State Militia to hold the disputed territory, and in making a survey. Moore's *History and Digest of International Arbitrations*, v. 1, p. 151.

† Winsor's *America*, v. 7, p. 180.

action thus: "I must confess that I did not think it a very urgent duty on my part to go to Lord Ashburton and tell him that I had found a bit of doubtful evidence in Paris, out of which he might perhaps make something to the prejudice of our claims; and *from which he could set up higher claims for himself*, or throw further uncertainty on the whole matter."\*

Mr. Webster's defence.

Such was the evidence available in support of Great Britain's title to the disputed territory in Maine, had due diligence been exercised in procuring it.†

Perhaps some of the international friction between the United States, Great Britain and Canada, is due to the want of disciplined experience, and tact, in subordinate officers, especially in those of the outside public service of the United States. Their Civil Service—owing to the frequent political changes, consequent upon their maxim, "to the victors belong the spoils,"—is unable to acquire the trained qualities, the diplomatic and departmental traditions, the permanent characteristics, and the political independence, of the British Civil Service. Had the American Civil Service similar traditions and characteristics, or were a non-political band of expert servants of the State, experienced in emergent foreign and colonial affairs, some unfortunate occasions of friction, for which the higher types of American Statesmen cannot be held responsible, would never

Some causes of International friction.

U. S. Civil Service.

British Civil Service.

---

\* Webster's *Works*, v. 2, p. 153. "The nature of the Federal Constitution gave Mr. Webster no chance of being honest." Grattan's *Civilized America*, v. 1, p. 364.

† "Our successive Governments are much to blame in not having ransacked the Archives at Paris; for they could certainly have done for a public object what Jared Sparks did for a private one, and a little trouble would have put them in possession of whatever that repository contained." Greville's *Memoirs*, part 2, v. 1, p. 469.

Canada's  
relations  
with U. S.  
have suffered.

have occurred. Our international relations with the United States have suffered accordingly; and Great Britain and Canada have been angrily and unjustly blamed on every occasion, when an American official's over-zealous interferences, and illegitimate incidents, have caused friction.

Incident of a  
spurious map  
and surveys  
in 1839.

In 1839-40, a map and certain reports of surveys of the "highlands of Maine," said to have been previously made by United States surveyors, were sought to be used as evidence before the Joint Commission on the Maine boundary. The British Commissioner, after investigation, was satisfied that the map was not genuine, and that the alleged surveys were "spurious surveys." He thereupon requested that the American surveyors should be examined on oath before the Joint Commission,—offering that the British surveyors should also be examined on oath at the same time. Both request and offer were declined.\*

Falsified  
documents in  
Behring Sea  
Arbitration  
in 1893.

During the Behring Sea Arbitration of 1893 some falsified and interpolated translations of Russian documents, the great majority of which "could only be accounted for by some person having deliberately falsified the translations in a sense favourable to the contentions of the United States," were made by a faithless official of the Department of State, and furnished to the British Foreign Office. Just as the Foreign Office was about to notify the American

---

\* The British Commissioners reported to the Foreign Office as follows: "It has apparently been the policy of the official American agents to substitute fancy for reality, and to endeavour to boldly put forward, as fact, a state of things which was for the most part hypothetical and conjectural, in order to draw attention from the real merits of the British claim." *North American Boundary Papers*, 1840 (Imp.), pp. 42-45.



authorities, the latter voluntarily withdrew the falsified translations, and furnished corrected ones; \* but the faithless official was never punished. In the same Arbitration, numbers of affidavits were offered by the United States as evidence against the British claims, some of which were certified by the officer to have been sworn before him, *on the same day*, at Lynn Canal (Alaska), Victoria (British Columbia), and San Francisco (United States). Another set of affidavits were certified by another officer to have been sworn before him, *on the same day*, at places 1,680 miles apart. Another officer who had taken twenty-three affidavits of certain Indians in Alaska, sent a police officer to them, who, in the presence of the British agent, used threatening language, and told them that the United States officer would send anyone to gaol who talked with, or gave evidence to, the British agent. The British printed argument further states that "in a great number of cases deponents, giving evidence for the United States, have been seen with reference to their affidavits; and almost invariably it has been found that the statements made in their original deposition were capable of considerable modification and explanation, not found in the original affidavit. Fresh affidavits have been obtained from some of these deponents. In many cases the witnesses directly contradict their former statements, and others even deny that they made them."† The Blue Book gives the extracts showing the contradictory statements of the witnesses.

Faithless  
official not  
punished.

Affidavits put  
forward by  
U. S.

U. S. officer  
threatens  
Indians giving  
evidence  
to British  
agent.

Contradictory  
statements in  
affidavits.

---

\* *Behring Sea Arbitration, British Counter Case*, U. S. Senate Ex. Doc., 1893-94, v. 8, pp. 7 and 305-378.

† *Ibid*, *Argument of Her Majesty's Government*, No. 4, 1893 (Imp.), pp. 148-157.

|                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Canada's<br>"Baptisms of<br>Blood" by<br>U. S. raiders. | From the United States, Canada has received several "Baptisms of Blood" through filibustering raids organized in that country, not from any international friction or embittered relations between Canada and the Republic; but solely because of the colonial relation and faithful allegiance of Canada to Great Britain. The                                                                                        |
| Invasions of<br>1775, 1812,<br>1837.                    | American invasions of 1775-76, 1812-14, 1837-38, as well as the Fenian Raids of 1866, 1870 and 1871, were undertaken by certain citizens of the United States in the hope of striking an effective blow at the British                                                                                                                                                                                                 |
| Fenian Raids<br>of 1866, 1870,<br>and 1871.             | Empire, in one of its most vulnerable parts. The Fenian Raids into Canada,—repulsed by the Canadian Militia,—were ostentatiously undertaken to avenge the alleged                                                                                                                                                                                                                                                      |
| U. S. failure<br>to prevent<br>Fenian raids.            | British misgovernment of the Irish people. The Government of the United States, though fully cognizant that their Fenian citizens were arming for the declared invasion of Canada, never interfered until some of their filibustering hordes had crossed the boundary, and had slain Canadians who were in no way responsible for the British government of the Irish people, and whose only crime was that of defend- |
| U. S. releases<br>Fenian ring-<br>leaders.              | ing their families, their homes and country; and then, after arresting a few of the returned Fenian ring-leaders, who had been caught red-handed, the same Government, at the request of Congress, and with undue precipitancy, released and pardoned them, and restored their arms.*                                                                                                                                  |

---

\* "It would be difficult to find more typical instances of national responsibility assumed by a State for such open and notorious acts as the Fenian Raids in Canada, and by way of complicity after such acts. Of course in gross cases, like these, a right of immediate war accrues to the injured nation." Hall's *International Law*, p. 180. The representations made by the Canadian to the Imperial Government of the action of the Government of the United States respecting the Fenian Raids are set out in *Canada Sessional Papers* (1872), No. 26.

A policy of discrimination against the trade of Canada with the United States, arose in 1806, when the Canadian merchants presented a memorial to the British Government, complaining of (1) their exclusion from Louisiana, with which they had traded while a colony of Spain, and subsequently a colony of France, the trade with which had amounted to from \$200,000 to \$250,000 yearly; (2) their being made to pay higher duties on goods carried by them into the United States, than the duties payable by citizens of the United States on goods imported from other countries—charging Canadians 22 per cent. at inland ports, instead of 16½ per cent., the duty at Atlantic ports. They also complained that, in violation of Jay's Treaty of 1794\*, they were compelled to pay \$6 for a license to trade with the Indians—not required of American citizens; and to dismiss their Canadian voyageurs at the United States ports, and to employ Americans "at great expense and inconvenience;" and that the United States revenue officers at Michilimackinac, had "harrassed and impeded the trade of British merchants, on pretences the most frivolous and unfounded, and in a manner equally vexatious and injurious."† The Treaty of 1806 was intended to remedy these complaints; but it was never ratified.

Discrimination against Canadian trade in 1806.

Exclusion from Louisiana.

Extra duties charged Canadians.

License charge for Indian trading.

Revenue officers impeded Canadian trade.

Treaty of 1806 not ratified.

---

\* This Treaty (Art. 3) provided that the people on each side of the boundary line should have free passage by land, or inland navigation, and freely to carry on trade and commerce with each other; and that goods and merchandise should be carried into each country, subject to the proper duties there charged. The Article declared that its provisions were intended to render the local advantages of each party common to both, and "thereby to promote a disposition favourable to friendship and good neighbourhood."

† *American State Papers, Foreign Relations*, v. 3, p. 152.

U.S. Congress prohibits trade with Great Britain. During the same year (1806), Congress prohibited trade with Great Britain, and her colonies, in leather, silk, hemp or flax, tin, brass, woollens, window-glass, silver, paper, nails and spikes, hats, clothing, millinery, playing-cards, beer, ale, porter, pictures and prints.\* And in 1809 commercial intercourse with Great Britain and her dependencies, and also with France, was interdicted.†

U. S. retaliatory law against Canadian vessels. In 1818, a retaliatory law closed the ports of the United States against British vessels coming from a port in a British colony which, by its ordinary laws of navigation, had closed its ports against vessels from the United States; and declared that such British vessel touching at or clearing from a port in another British colony which was open to vessels of the United States, should not be held to remove the interdict. It also required that British vessels taking on board articles of the growth, produce or manufacture, of the United States, should give bonds not to land them in such inhibited British colony, on pain of forfeiture; but in legislative irony it was declared that such interdiction should not be construed to violate the Treaty of Commerce of 1815,‡ which provided that the inhabitants of the two countries should have liberty, freely and securely, to come, with their ships and cargoes, to all places, ports and rivers in their respective territories, and to hire and occupy houses and warehouses, and enjoy the most complete protection and security for the purposes of their commerce.

Not to land U. S. goods in Canada.

Violation of Treaty of 1818.

---

\* *United States Statutes at Large*, v. 2, p. 379. The law was modified in 1808.

† *Ibid*, v. 2, pp. 529 and 550.

‡ *United States Statutes at Large*, v. 3, p. 432.

In 1820, a further retaliatory law closed the ports of the United States against British vessels coming from Lower Canada, New Brunswick, Nova Scotia, Newfoundland, Prince Edward Island, and other named British Possessions. \*

And in 1887, Congress, in a minatory spirit of retaliation against Canada, and in the assumption of a right to interpret a Treaty, as judge and party, in the absence of the other party to it, † passed a law authorizing the President, in certain eventualities, to deny to Canadian vessels, their masters and crews, any entrance into the waters, ports, or places within the United States, except in cases of distress, etc., and to prohibit the entry of Canadian fresh or salt fish, or any other product of, or other goods coming from, the Dominion of Canada into the United States. ‡

Of the early policy of discrimination, the McKinley and Dingley tariffs may be cited as the more modern developments; for they contain many provisions framed to hamper Canadian trade with the United States. The latter tariff puts a high duty on Canadian timber imported into that country,—to which is tacked an automatic rider, that if Canada § should impose an export duty on saw-logs, or other specified timber product, going from it into the United States,

U. S. assumes to interpret Treaties by a retaliatory statute.

McKinley and Dingley Tariffs.

Automatic rider against Canada.

---

\* *Ibid.*, v. 3, p. 602. The law was modified in 1823, and repealed in 1830.

† *Aliquis non debet esse iudex in propria causa, quia non potest esse iudex et pars.* Co. Lit. v. 1, p. 15. See *Canada Sessional Papers* (1878), p. 63.

‡ *United States Statutes at Large* (1887), v. 24, c. 339, p. 475. No occasion for the enforcement of this law has ever been given by Canada.

§ The words in the United States Statute are: "any country or dependency."



the prescribed high duty on Canadian timber should be increased by an additional sum, equal to the amount of such Canadian export duty.

Attempt  
against  
British and  
Canadian car-  
rying trade.

An attempt to prejudicially affect the British and Canadian carrying trade with the United States was, by an amendment, surreptitiously introduced into the Dingley tariff, by which a discriminating duty of ten per cent.—in addition to the high customs duties therein imposed—should be levied on all goods carried into the United States by the Canadian railways or British ships. Owing to the bungling phraseology used, the obnoxious amendment failed of the purpose since avowed by its promoters.\*

Retaliatory  
law of 1892  
respecting St.  
Mary Canal.

Again, in 1892, another retaliatory law was added to the samples of unfriendly legislation against Canada which are contained in the *United States Statutes at Large*, by which the President was authorized, whenever the passage of United States vessels through the Canadian Canals was “made difficult or burdensome by the imposition of tolls or otherwise,” to suspend or prohibit the free passage of Canadian vessels through the United States canal at Sault Ste. Marie. It appeared that the Canadian Government had, for some years, imposed a uniform rate of toll for all vessels passing through the Canadian Canals; but in 1892, in order to encourage the ocean carrying trade, had allowed a rebate of tolls on freight, limited to farm products only, going to Montreal for ocean export;† but not on freight of similar farm products, or other merchandise, going to Toronto, Kingston or to any intervening Canadian port on Lake Ontario, or the St.

Canada  
favours ocean  
trade.

---

\* *United States Statutes at Large*, v. 30, p. 151.

† See *Statutes of Canada* (1892), Part 1, page c.

Lawrence River, between the Welland Canal and Montreal; placing all non-ocean exporting ports in Canada and the United States on an equal footing. Thereupon the President issued a Proclamation imposing a toll of twenty cents per ton on all kinds of freight carried by Canadian vessels passing through the St. Mary Canal. The following year the Canadian Government, so as to avoid all possible ground of complaint, readjusted the canal tolls, and imposed a uniform rate of ten cents per ton on all freight passing through the Canadian Canals. The United States thereupon revoked the Proclamation of 1892 imposing tolls on Canadian freight. \*

U. S. and  
Canada non-  
ocean ports  
not affected.

Canada's  
conciliatory  
action.

These unneighbourly and retaliatory laws of Congress, restricting and prejudicially affecting the trade of Canada with the United States, have, happily, no duplication, or counterpart, in the legislation, or in the Executive acts, of either Great Britain or Canada.

No similar  
laws in Great  
Britain or  
Canada.

The acts of armed hostility, and international and commercial unneighbourliness, on the part of some of the dominant politicians of the United States, instanced above, and others, have, at the times, naturally roused a spirit of irritation and resistance, even a threatened *lex talionis*, in Canada, which has severely tried the forbearance and political discretion of the resourceful and courageous people who, for over a century, have maintained untarnished the supremacy and honour of Great Britain over one-half of the North American continent. With such experiences it would, perhaps, be wrong to deny that sometimes a stricter policy, or perhaps a subtile form of retaliation, has been adopted by

Effect of these  
unfriendly  
acts on  
Canadians.

---

\* *United States Statutes at Large*, v. 27, pp. 267, 1032, and 1865.

Reasonable  
self-defence.

Golden rule  
offered by  
Canada.

Accounta-  
bility of the  
U. S. to other  
nations.

Political acts  
tending to  
another  
nation's  
degradation.

Canada—partly as a means of reasonable self-defence, and partly to suggest a re-consideration of their unfriendly policy towards their northern neighbour.\* But the many suggestions for reciprocal trade, and attempts at treaty-making, show that the offer of the golden rule has been more frequently made by Canada, than by the United States.

The moral accountability of the United States to their own people, as well as to foreign nations, (and this must be considered as applying to Canada as well), necessarily involves some restraint on their political actions,—that, as a nation, they may so deal with another nation as they would reasonably expect such other nation should deal with them.† Political actions of a nation tending to degrade another, and the studied neglect of that courtesy of expression which Governments are wont to observe in discussing international questions, mar diplomatic intercourse, and induce petty international disputations, and mean reprisals, where the nation affected is not prepared to submit

---

\* As an illustration the reader may be referred to the Crown Timber Regulations (1898), authorized by the Ontario Act, 61 Vict., c. 9, requiring all pine cut on Crown Lands to be manufactured into timber in Canada,—lately decided by the High Court of Justice to be within the legislative authority of the Province of Ontario. Precedents for such legislation will be found in many of the early English Statutes. An Act, 50 Edward 3, provided that “no woollen cloths shall be carried into any part out of the realm of England, before they be fulled” (c. 7). And another Act, 3 Henry 7, c. 11, reciting the complaint of the poor men of the crafts of shearmen, fullers, and other artificers, provided that woollen cloths should not be carried out of the realm before they be barbed, rowed, and shorn.

† “A State is a moral person, capable of obligations as well as rights. No acts of its own can annihilate its obligations to another State.” Woolsey's *International Law*, p. 52.

to the degradation, or discourtesy.\* Among such actions may be classed minatory laws authorizing a prospective retaliatory policy towards another nation, or certain of its inhabitants; laws authorizing a threatened increase of duties on all, or classes of, importations from it; laws impairing its treaty agreements, or claiming to exercise control within disputed territorial boundaries; or automatic laws contingent upon possible fiscal eventualities, or a probable political policy, of such other nation. An audience of sedate on-looking nations would doubtless consider such laws as the hostilities of a tactless diplomacy,—even though the nation so legislating should boast of its fiscal smartness, and legislative cunning, and diplomatic strategy.

Much of the former political unfriendliness to Great Britain was largely nurtured by the slow poison of political hostility, and which is, even yet, daily imbibed by the American youth from their school and history books; and may excuse the declaration made a few years ago by some Anglophobe newspapers that “American hatred of England is deep-rooted and unslakable.” That hostility was also aggravated by the machine politicians who controlled the “lobbies,” and “rings,” or “bosses,” or “trusts,” and other base powers so graphically described in Professor Bryce’s *American Commonwealth*.† The simulated patriotism of these irresponsible elements has sometimes beguiled a certain percentage of citizens of sympathetic and humane instincts, who, knowing better, and desiring friendliness and better trading facilities and diplomatic rela-

Minatory and  
retaliatory  
laws.

Hostilities of  
a tactless  
diplomacy.

Hostility to  
Great Britain  
in U. S. school  
books.

“American  
hatred of  
England.”  
U. S. politics  
controlled by  
lobbies, rings,  
etc.

Prior  
simulated  
patriotism.

\* See Lord Clarendon’s references in Hansard’s *Debates*, v. 79, p. 117.

† v. 2, chapter 63, *et seq.*

Some U. S.  
citizens  
friendly to  
Canada.

tions with Great Britain and Canada, when, inflamed by some alleged British, or Canadian wrongdoing, or fancied selfishness, have allowed the demagogue power of political unrighteousness to sway their fair-minded consciences, and reverse their friendly instincts. A larger percentage, however, have been influenced, some by Canadian relationships and intimacies, or commercial advantages; others inspired by a sympathetic interest in the graver duties of their political responsibilities, and a beneficent civilization, have endeavoured, by the promotion of philanthropic movements, to improve and elevate the moral character and political manhood of their own nation, and also to maintain sympathetic and neighbourly relations in such interests with the kindred people of Canada.

Canada's  
estimate of  
the U. S.  
political  
impulses.

Canada's neighbourship enables her to appraise at their true value, the spasmodic political impulses which, until recently, found vent,—sometimes in pleasant, though vapourous, platitudes about kinship and language and political freedom; and sometimes in blustering and effervescent hostility to Great Britain. For the moment, the American orator's "tail twisting" performances, or political fireworks, against "our eternal enemy, Great Britain," that "proud, arrogant and grasping enemy," formerly aroused sympathetic cheers from a portion of the American community; but in Canada they were generally regarded as political circus exhibitions, or gaudy bathos. The forest-axe, the plough-share, and the sowing and reaping-machines, are Canada's indigenous and cherished weapons; and armed with them, and skilled in their use, she challenges her neighbour-nation to a strenuous and scientific warfare for supremacy on the farm-battle-fields of nature.

Canada's  
weapons.



Nor has Canada's Daughter-love been weakened by the former indifference of Mother Britain; or the chilling advice, given in 1873 by the leading organ of English public opinion—patriotically rebuked by Lord Tennyson in the “*Idylls of the King*,”—that Canadians, the men of the “true North,” should take up their freedom, seeing that “the days of their apprenticeship were over;” or the oft-published apocryphal prophecy that in the event of a dilemma, Canada, owing to her far closer commercial relations with the United States, would not be long in making up her mind to sacrifice her British association; \* or the philosophic sneer at the “official mendacity” of the Canadian Constitution in declaring itself to be “similar in principle to that of the United Kingdom.” †

Canadian public men know that the dominating policy of the people of Canada has been to patiently and wisely subordinate these unneighbourly and unmotherly experiences to the allegiance and political responsibility they owe as one of the nation-communities of their great Imperial Empire. And they sincerely desire that the sentiments of a late distinguished and fair-minded American Secretary of State,—who had so eloquently and tersely expressed the Canadian ideas of a neighbourly and healthful international relationship,—would influence the Government of the United States in its dealings with the Government of Canada: “The gravity of the present condition of affairs,” wrote the late Mr. Bayard, “between our two countries

---

\* Thorold Rogers's *Political Economy* (1876), p. 255. “Every man of sense, whether in the Cabinet or out of it, knows that Canada must at no distant period be merged in the American Republic.” *Edinburgh Review* (1825), v. 42, p. 290.

† Dicey's *Law of the Constitution* (1886), p. 153.

demands entire frankness. I feel that we stand 'at the parting of the ways.' In one direction I can see well-assured, steady, healthful relationship, devoid of petty jealousies, and filled with the fruits of a prosperity arising out of a friendship cemented by mutual interests, and enduring, because based upon justice.

International  
friendship  
based upon  
justice.

On the other, a career of embittered rivalry staining our long frontier with the hues of hostility, in which victory means the destruction of an adjacent prosperity, without gain to the prevalent party;—a mutual physical and moral deterioration which ought to be abhorrent to patriots on both sides.” \* \* \* “It behooves therefore those who are charged with the safe conduct of the honour and interests of the respective countries, by every means in their power, sedulously to remove all causes of difference.” \*

Duty on both  
sides to re-  
move causes  
of difference.

Friendship  
of Great  
Britain for  
the U. S.

Not in eloquently phrased sentiments have the people of the United States recently realized what the diplomatic friendship of Great Britain has been worth to them in a trying international emergency. Their great and powerful Motherland, without any

---

\* Hon. T. F. Bayard to Sir C. Tupper, 31st May, 1887, *Canada Sessional Papers* (1888), No. 36. Similar sentiments had been uttered by a Canadian Statesman, nearly thirty years before in these words: “Captious objections, fancied violations and insults, should be discountenanced; and above all there should be an abstinence from attributing to either nation or people, as a national feeling, the spirit of aggression. Every friend of humanity would regret further misunderstanding between Great Britain and the United States. The march of improvement which is to bring the broad regions of North America, between the Atlantic and Pacific within the pale of civilization, is committed, by Providence, to their direction. Fearful will be the responsibility of that nation which mars so noble an heritage.” Hon. J. H. Gray (1858), cited in Moore’s *History and Digest of International Arbitrations*, v. 1, p. 473.

suggestion from them, but under the inspiration of a long existing, and most real, sympathy for her kindred in the United States, diplomatically intervened on their behalf, and effectively suppressed a threatened intervention of certain European powers against them in their recent war with Spain; and she did it quietly, without flaunting the potentiality of her Sea Power, or the influence of her diplomacy, and without any expectation of national gratitude. But her unasked and imperial beneficence, and diplomatic intervention, can never be forgotten; for these potential acts of regal friendship for her "kin beyond the sea" have now become part of the war-history of the Republic.

Intervention during Spanish-American War, 1898.

The moderating effect of this friendly diplomatic intervention of Great Britain, and the conciliatory advances of Canada, seemed to have made propitious the opening of diplomatic negotiations between the United States and Canada in 1898. The people of both communities seemed desirous of adjusting on equitable terms, all causes of previous international misunderstandings, or friction, and of agreeing upon a reciprocally advantageous policy respecting the trading relations, and carrying privileges of each country;—necessarily involving mutual modifications of some details in their respective fiscal systems.

Diplomatic Negotiations of 1898.

To adjust all differences.

Modification of fiscal systems.

But the auspicious anticipations of the people of Great Britain and Canada of an adjustment of international differences, have unfortunately been jeopardized by the inexplicable position taken by the United States Commissioners on the Alaska Boundary question, in refusing to refer that question to Arbitration on similar terms to those imposed on Great Britain by the United

Inexplicable position of U. S. on Alaska question.

Varying  
Venezuelan  
precedent.

States in the Venezuelan reference;\* and in seeking to vary that precedent prejudicially to Canada by "a marked and important departure from the rules in that boundary reference," by requiring that the Arbitrators should be debarred from considering, or holding, that the Russian Treaty of 1825 was applicable to the cases of towns or settlements on tide-water which may have been settled in recent years under the authority of the United States; but that all such towns should be conceded to be within the territory and jurisdiction of the United States at the date of the proposed Treaty,—practically requiring, as a condition of arbitration, their forced cession to the United States, and that "an effect should be given to the United States' occupation of land in British territory which justice, reason, and the equities of the case do not require."

Condition of  
Arbitration  
involves  
cession of  
Canadian  
territory.

Mr. Bayard's  
sentiments  
forgotten in  
U. S. treat-  
ment of the  
Alaska  
question.

The position thus taken shows that, neither the inspiration of Mr. Bayard's sentiments, nor the more friendly relations with Great Britain, have moderated the policy of the United States, respecting the Canadian rights in the Alaska boundary dispute. Both Americans and Canadians are given to bargaining. But in view of the United States appetite for Canadian territory, it is a simulated parade of indignation to charge Canada with "demanding a slice of American territory." How much of the territory in dispute

---

\* The terms of the Venezuelan Arbitration were: that adverse holding,—such as political control, as well as actual settlement,—for fifty years, should make a good title; and that the Arbitrators should give effect to claims resting on other grounds or principles valid in International Law, which were not in contravention of the fifty years limitation; and should also give effect to equities arising out of the occupation of either nation's territory by the subjects or citizens of the other.

belongs to either nation, depends upon the meaning of the Treaty with Russia of 1825, which defined the width of the *lisière de côte*, or Russian strip of territory on the coast. The Treaty placed the line of demarcation on the summit of the mountains parallel to the coast, but declared that wherever their summits should prove to be at a distance of more than ten marine leagues (thirty miles) *from the Ocean*,\* the limit should be formed by a line parallel to the windings of the coast, and should never exceed (*ne pourra jamais*) the distance of ten marine leagues therefrom. The phrase which determines how the extreme width of the Russian strip of coast is to be measured over the inland territory is "the distance of ten marine leagues from the Ocean;" and the phrase which directs how the boundary line is to be drawn on that inland territory is "by a line parallel to the windings of the coast" along that from which the measurements are to be made, *i.e.*, the ocean;—subject to the negative and imperative restriction that such line "shall never exceed the distance of ten marine leagues therefrom." †

Russian  
Treaty of  
1825 defines  
limits from  
the Ocean.

Controlling  
phrases in  
Treaty.

Negative  
words.

---

\* Before the Treaty was signed, each Power submitted a draft Treaty, providing, in negative words, that the strip of coast should not exceed in width ten marine leagues from the sea,—the British expression being *depuis la mer*, and the Russian *du bord de la mer*. But the Treaty reads—" *de l'Océan*,"—an improved and more accurate expression,—equivalent to the term "the high seas,"—which are free and open to all nations, "no nation having territorial title to them;"—and therefore a term which does not include and is wholly inapplicable to "littoral" or other "territorial," or "inland," seas, such as rivers, inlets, bays, or harbours of a certain limited width, defined by International Law. The articles describing the Treaty-boundaries of Alaska are given in Appendix No. 1.

† The negative forms of expression used in the draft treaties were : *British*.—"The strip of coast shall not in any case extend in width



These references to the provisions of the Treaty would seem to make it reasonably clear to judicial minds that the measurements of the *lisière*, or strip of Alaska coast, are not to be made from the head waters of its rivers or inlets, but from the Ocean.\*

Meaning of  
"ocean."

By the Award in the Behring Sea, or Fur Seal, Arbitration between Great Britain and the United States, made in 1893, it was unanimously decided that the ocean referred to in the Treaty of 1825 between Great Britain and Russia, meant the Pacific Ocean.†

Meaning of  
"coast" and  
"shore."  
Artificial  
shore at  
mouths of  
rivers and  
bays.

The terms "coast" and "shore" in International Law include not only the natural territorial coast or shore washed by the ocean, but also an artificial coast, or shore, or sea-front, formed by a straight line drawn from headland to headland, across the mouth of each river, inlet or bay, of a certain width recognized by International Law, or Treaty. And such river, inlet or bay, is designated and recognized as a territorial or littoral sea; and its national character is reckoned from such straight line, or artificial sea-front, and seaward to a distance of a marine league therefrom.‡

---

from the sea towards the interior beyond the distance of ten marine leagues." *Russian*.—"The strip of coast shall not have in width upon the continent more than ten marine leagues measured from the shore of the sea." "Every statute (and the same rule applies to treaties), limiting anything to be in one form, includes in itself a negative." Viner's *Abridgment*, v. 15, p. 540. Negative words in a statute (or treaty) are to be construed as imperative. *Rex v. Leicester*, 7 Barnwell and Cresswell's Reports, 12.

\* See General Cameron's Report on the Alaska boundary, (1885).

† *Fur Seal Arbitration Papers*, U. S., v. 1, p. 78.

‡ "The littoral sea, or territorial water, is reckoned to begin from a straight line drawn between the headlands, shoals, or islands, which form the mouth or entrance of the closed bay or river, and between

It is conceded by both Great Britain and the United States, that the Treaty-boundary line between Canada and Alaska, crosses all the rivers which flow from the interior of Canada through Alaska and into the Pacific Ocean,—either where the “summit of the mountains,” nearest the coast, becomes the boundary, or where the “ten marine leagues from the ocean,” determines it. And that the opposite shores of the coast territory along these rivers, as well as the beds of all such rivers, within the *lisière*, or strip of coast, described in the Treaty, belong to the territorial domain of the United States in Alaska.\* And it will doubtless be conceded that the term “Ocean,” as interpreted by the International Award, does not include, and is therefore wholly inapplicable to, any such water-channels as are ordinarily known or designated as rivers or inlets, or bays, or other channels, of a certain limited width.

Alaska  
boundary  
crosses  
Canadian  
rivers.

At summit  
of mountains  
or at ten  
marine  
leagues from  
ocean.

“Ocean”  
does not in-  
clude inlets,  
etc.

The maps of Alaska indicate that along its coast there are several water-channels coming from Canada, which are designated, apparently at random, as rivers, inlets, channels, and canals,—the latter designation being perhaps rather inapt. The term “canal” ordinarily means an inland navigation, and includes: (1) canals proper, *i.e.*, artificially constructed water-channels; (2) tidal canals, *i.e.*, those affected by the

Maps of  
Alaska.

“Canal” an  
inapt term.

Its ordinary  
meaning.

---

which the breadth is not more than ten sea miles.” *Netherlands Manual of International Law*, by Jan Helenus Ferguson, v. 1, p. 397. The “coast sea,” to a distance of a marine league, is territory. Woolsey’s *International Law*, p. 80.

\* The Congress of Vienna of 1815, in opening the Rhine and other rivers to and from the sea, declared that “Navigation for the purposes of trade is not to be interdicted to any person on such navigable waters as traverse the territories of several States; this being conditioned on their conformity to local police regulations.”

Four classes  
of canals.

rise and fall of tides; (3) rivers rendered navigable by weirs to increase their depth of water, and locks for the ascent and descent of vessels; (4) to which may be added the class described as "ocean ship canals," *i.e.*, canals connecting oceans or seas, such as the Suez Canal, between the Mediterranean and Red Seas; the Panama Canal, and the Nicaragua Canal, between the Atlantic and Pacific Oceans, and the Kaiser Wilhelm, or Holtenau, Canal, between the Baltic and North Seas.

Lynn Canal  
is the crux in  
the dispute.

But the international dispute between the United States and Canada is whether the Lynn Canal is an inlet, or a territorial, or littoral, sea, or tidal river; high sea, or ocean. If it is an inlet, or a territorial, or littoral, sea, or tidal river, then for thirty miles inland from a straight line drawn across its sea-front or mouth at its junction with the ocean, it is part of the territorial domain of the United States; and the precedents of the United States will sustain the claim of Great Britain and Canada to the latter's sovereignty over its upper territorial waters, beyond that distance,\* and

U.S. precedents sustain  
Canada's  
claims.

---

\* In 1793, the United States declared that Delaware Bay was part of the territory of the United States, and that the capture of a British ship within its waters by a French ship-of-war, was unlawful. See *American State Papers, Foreign Relations*, v. 1, p. 148; and 1 Kent's Com., p. 30. Delaware Bay is 10.5 nautical miles wide from headland to headland at its junction with the Atlantic Ocean, widening to twenty-five miles inland, and is sixty miles long. Chesapeake Bay, which is also said to be claimed by the United States as a territorial, or closed sea, is 12.7 nautical miles wide from headland to headland at its mouth. Lynn Canal, which is claimed by Canada as an inland water-channel and as equivalent to "inlet" or "tidal river" as defined by International Law, has islands at its junction with the ocean, and the several water channels at its mouth are respectively  $4\frac{3}{4}$ ,  $1\frac{3}{4}$  and  $1\frac{1}{2}$  nautical miles wide from shore, or island, headland to headland, widening to about ten miles inland, north of the islands.

apparently International Law will sanction no other conclusion.

But it is difficult to harmonize the arguments of the United States respecting the Lynn Canal, with the recognized rules of International Law, and their own precedents,—according to which it must be classed as a territorial, or closed, sea, and therefore “territory.”

One of these arguments is that the expression “windings (*sinuosités*) of the coast,” entitles the United States to measure the Alaska coast-strip from the salt-water shores of Lynn Canal, and not from its mouth or ocean front. The United States also claim dominion over the whole length and width of its water-covered soil-bed, by virtue of its being a closed sea. But the claim and the argument are mutually destructive of each other; for if the Lynn Canal is, as admitted, a closed sea, then by International Law, its soil-bed and the waters over it,—like the soil-bed and waters of a river,—come within the definition of, and are subject to the same rules as, land and territorial domain.\* The United States, however, claim to be entitled to the sovereignty over the whole territorial area and waters of Lynn Canal, and also over thirty marine miles of additional inland territory.

Since the unpropitious close of the Negotiations, it has also been charged that Canada has tacitly allowed the United States to administer the “disputed territory” as their own, and that their citizens have been permitted to settle there for the last twenty-five or thirty years; a charge which cannot, in view of the actual facts, be sustained. The United

U. S. conflicting arguments.

As to Lynn Canal.

Charge that Canada has allowed U. S. to govern.

---

\* “That arm or branch of the sea which lies within the *fauces terreæ*, where a man may reasonably discern between shore, is, or at least may be, within the body of the county.” Lord Hale’s *De Jure Maris*, Part 1, c. 4.

U. S. proceedings  
1867-68.

Before any  
U. S. settle-  
ment Canada  
urged a  
boundary set-  
tlement.

U. S. Con-  
gress failed  
to produce  
funds.

Canada's  
action in  
1876.

U. S. refusal  
to appoint  
Commission.

Convention of  
1892 to settle  
boundary.

States obtained possession of Alaska on the 18th October, 1867, and the necessary legislation to carry the Treaty of cession into effect, was passed on the 27th July, 1868. In July, 1871, Canada acquired the adjoining territory; and in March, 1872, before any settlement had been made by citizens of the United States in the now disputed territory, efforts were made by Canada and Great Britain, to induce the United States to agree to a delimitation of the boundary line according to the terms of the Treaties of 1825 and 1867. But the Secretary of the United States while "perfectly satisfied of the expediency of such a measure, feared that Congress might not be willing to grant the necessary funds." His fear was realized, for Congress failed to make any appropriation. Canada, however, at once bound herself to bear one-half of the British expenditure for determining and marking out the boundary.

Further efforts by Great Britain and Canada were made yearly from that date; and in 1876, in a lengthy report by the Prime Minister of Canada, it was stated that "notwithstanding every effort made by the Canadian Government to obtain a complete, or even a partial, delimitation of the boundary line between Alaska and British Columbia, that question still remains undealt with in consequence of the refusal of the Government of the United States to agree to the measures necessary for appointing a Joint Commission." \*

After further yearly "continual wearying" by Canada, a Treaty-Convention between the United States and Great Britain was signed at Washington on the 22nd July, 1892, for the delimitation of the whole boundary line from the Prince of Wales Island to

---

\* *Canada Sessional Papers* (1878), No. 125, p. 60.



Mount St. Elias, in which, after a recital acknowledging the fact of the unsettled boundaries and a diplomatic desire for the removal of all differences in regard to the Treaty-boundary, it was declared that :—

“The High Contracting Parties agree that a coincident or joint survey (as may be found in practice most convenient) shall be made of the territory adjacent to that part of the boundary line of the United States of America and the Dominion of Canada dividing the territory of Alaska from the Province of British Columbia and the North-West Territory of Canada, from the latitude of  $54^{\circ} 40'$  north to the point where the said boundary line encounters the  $141^{\text{st}}$  degree of longitude westward from the meridian of Greenwich, by Commissions to be appointed severally by the High Contracting Parties, with a view to the ascertainment of the facts and data necessary to the permanent delimitation of said boundary line in accordance with the spirit and intent of the existing Treaties in regard to it between Great Britain and Russia, and between the United States and Russia.”

Joint survey to be made.  
Whole boundary to be surveyed.  
Boundary to be according to spirit and intent of the Treaties.

After providing for certain details, the Convention proceeds: “The High Contracting Parties agree that as soon as practicable after the report or reports of the Commissions shall have been received they will proceed to consider and establish the boundary line in question.” No conditions, similar to those recently sought to be imposed upon Canada, appear to have been thought of, or suggested, when this Treaty-Convention, and the subsequent one extending it to the 31st December, 1895, were signed.

And to be established after Commission reports.  
No conditions imposed.

A further admission of an unsettled boundary was made in a supplementary Treaty-Convention between

Treaty of 1897.

the United States and Great Britain, signed on the 30th January, 1897, for the survey of the 141st meridian from Mount St. Elias to the Frozen Ocean, reciting the Treaties of 1825 and 1867, and that the location of the said meridian involved "no question of the interpretation of the aforesaid Treaties," it was thereby agreed to appoint Commissioners and other officers for such survey. It further provided that:—

Provision as  
to Mount  
St. Elias.

"Inasmuch as the summit of Mount St. Elias, although not ascertained to lie in fact upon said 141st meridian, is so nearly coincident therewith that it may conveniently be taken as a visible landmark whereby the initial part of said meridian shall be established, it is agreed that the Commissioners, should they conclude that it is advisable to do so, may deflect the most southerly portion of said line so as to make the same range with the summit of Mount St. Elias, such deflection not to extend more than twenty geographical miles northwardly from the initial point."

Treaties  
an acknowl-  
edgment of  
doubtful  
title of U. S.

These acknowledgments of an unsettled international boundary line between the territories of Canada and Alaska; and these solemn treaty-agreements to ascertain the facts and data necessary to the "permanent delimitation of the said boundary line in accordance with the spirit and intent of the existing Treaties in regard to it" were diplomatic and national admissions of a doubtful and unascertained title in the United States to the territory adjacent to the actual boundary; and must therefore be justly conceded to be a conclusive refutation of the recent charge of Canada's tacit acquiescence in any alleged settlements of the United States; and must also be taken to be conclusive and binding admissions by the Government of the United States that there

Refute  
charges  
against  
Canada.

were, up to 1897, no rights arising from settlements in any part of the disputed territory, based upon any acquiescence of Canada; or, if there were, that any claims or rights respecting them, were then waived by the United States; or were too insecure and too unsubstantial to warrant any claim in the preceding diplomatic discussions or any reservation of them in the Treaties.\*

No U. S. rights claimed prior to 1895-97.

It may be further observed that the action of the High Commissioners of the United States is also all the more inexplicable in view of the condemnation of the boundary line claimed by the official maps issued by the Government of the United States, pronounced in the Despatch of a former Secretary of State to the American Minister to England, and subsequently presented to Congress, in which he said :—

U. S. claim of boundary.

Condemned by U. S. Secretary of State.

“The line traced on the Coast Survey Map of Alaska, No. 960, of which copies are sent to you herewith, is as evidently conjectural and theoretical as was the mountain summit traced by Vancouver. It disregards the mountain topography of the country, and traces a line on paper about thirty miles distant from the general contour of the coast. The line is a winding one, with no salient landmarks or points of latitude or

---

\* The settlements about Lynn Canal have been as follows: “In 1884, a log shanty was built at Dyea by a trader. In 1888, another was built at Skagway. No further settlements were made at either place until about 1897. The first known grants of land there were made by the United States in 1898. In the Yukon territory, a survey made in 1896 placed the Town of Forty-mile, which had been assumed to be west of the 141st meridian and on United States territory “within Canada, and therefore subject to Canadian jurisdiction and the laws of the Dominion of Canada.” The survey was acquiesced in, and no question of prior settlements there under the authority of the United States, was raised. See *Bulletin U. S. Department of Labour*, 1898, p. 355.

longitude to determine its position at any point. It is in fact such a line as it is next to impossible to survey through a mountainous region, and its actual location there by a surveying commission would be nearly as much a matter of conjecture as tracing it on paper with a pair of dividers." \* His Despatch closed by urging the expediency of appointing an international commission, at the earliest practicable day, to fix upon a conventional boundary line in substantial accord with the presumed intent of the negotiations of the Anglo-Russian Convention of 1825.

U.S. Despatch urges a line in accord with the Treaty of 1825.

British conciliatory offer in 1899.

U. S. conditions a repudiation of Treaties 1892-5-7.

Involved a forced cession of Canadian territory.

Treaty boundary were to govern.

The proposal of Great Britain and Canada to refer the dispute to arbitration on the terms of the Venezuelan precedent, indicated a conciliatory effort to secure an equitable and final decision on the boundary dispute; when, had such a proposal been made by the United States, it could have been effectively urged that it was entirely inconsistent with the positions assumed by each of the High Contracting Parties in previous diplomatic negotiations, and was also an unwarranted departure from the precise terms of the Treaty-Conventions of 1892-95-97. But the non-acceptance of the British and Canadian proposal, unless on dishonorable conditions which involved a surrender of Canadian rights, and a condonation of a territorial usurpation, must have come as a diplomatic surprise; for it meant a national repudiation of the unconditional and unfettered terms under which the United States had, in those Treaty-Conventions, solemnly pledged their national faith to Great Britain, to delimitate and establish "the boundary line *in accordance with the spirit and intent of the existing Treaties* in regard to it

---

\* Mr. Bayard to Mr. Phelps, 20th November, 1885.

between Great Britain and Russia, and between the United States and Russia." The rejection of such surrender-conditions, and the consequent withdrawal of the British and Canadian Commissioners from the unfinished Diplomatic negotiations, were eminently justifiable, and were the only dignified courses that could have been adopted. \*

British close  
of negotia-  
tions justifi-  
able.

A further impediment to a mutual reference to arbitration, arose on the anomalous proposal of the United States Commissioners to refer the dispute to six jurists, instead of three, as proposed by the British Commissioners. The British Commissioners were unable to agree to this counter proposition, because it did "not provide a tribunal which would necessarily, and in the possible event of differences of opinion, finally dispose of the question."

Further  
impediments  
by U. S.

Tribunal not  
necessarily  
final.

Finding, therefore, that neither the precedent of the Venezuelan boundary arbitration, nor any reasonable compromise of the Alaska boundary dispute, nor any equitable concessions within the recognized rules or principles of International Law, would be admitted or conceded by the Commissioners for the United States,

Dead-lock in  
negotiations.

---

\* The special qualities of American diplomacy—referred to in other portions of this work—may be further illustrated by the following comments by an American writer on Mr. Seward's despatch excusing the *Trent* affair in 1861. "He glided lightly over the difficult places, substituting for thorough argument here a plausible assumption; there a crafty implication. He assumed an analogy where there was none, and then used his false assumption to support his contention. That his argument was unsound, was a tribute to his marvellous skill in 'making bricks without straw.' It was a political masterpiece. But what he accomplished was one of the greatest feats of the war-period; and has rightly given him lasting fame and honor in American history." *Life of William H. Seward*, by Frederick Bancroft (1900), v. 2, p. 242 *et seq.*



Surrender of Canadian rights and authority. except such as involved a surrender of Canadian territory, and a treachery to the British subjects settled there, and therefore a degradation of British and Canadian sovereignty; and that a dead-lock had been reached, the British Commissioners were of the opinion that no useful end would be served by further pressing, at the present time, the Negotiations, and that they must refer the matter to their government.\* The responsibility and reproach therefore of allowing the diplomatic differences and unneighbourly disputes between the United States and Canada to continue, and perhaps become more irritating, or festering, sores in their international relations, must hereafter rest upon the United States Commissioners, and not upon Canada, nor the British Commissioners.†

Alaska boundary referred to their Government. After discussing the constitution of the proposed arbitral tribunal, and the selection of an umpire from the American continent,—which was declined by the American umpire declined by Great Britain. the British Commissioners owing to “the long maintained

---

Agreement of 1899 excludes Canada from Lynn Canal. \* An agreement, or *modus vivendi*, for a Provisional boundary line about the head of the Lynn Canal, was entered into at Washington on the 20th October, 1899; but the line gives Canada no access to the head waters of Lynn Canal except over territory claimed to belong to the United States, and thereby bars the free access of Canadians to the ocean; and may possibly, in future negotiations, be claimed to operate as a waiver of Canada's rights to the shores and territory above the “ten marine leagues from the ocean;” or as a condonation of an adverse occupation and political control by the United States of Canadian territory. The agreement is given in Appendix No. 2.

† Lord Clarendon in a debate in the House of Lords on the Oregon question, after referring to the predilection the United States had of acquiring what did not belong to them, said: “If their government did consent to negotiate it would seem that it could only be upon the basis that England was unconditionally to surrender her pretensions to whatever might be claimed by the United States.” 79 Hansard's *Debates*, p. 117.

and recently asserted policy of the United States towards the other countries on that continent," and which would not offer to Great Britain the guarantee of impartiality, the Protocol records that the Commissioners of the United States then "proposed that the Joint High Commission should proceed to a determination of the remaining subjects of difference named in the original Protocol. They regarded it as unwise to further defer the adjustments so nearly concluded after full consideration. Several subjects were so far advanced as to assure the probability of a settlement. If, then, all differences, except one, could now be adjusted, would it not be a most commendable advance in neighbourly friendship? Could not our respective governments be trusted to settle the principal remaining difference by direct negotiations?"

U. S. desired to complete the matters nearly concluded.

"The United States Commissioners further regretted the suspension for any long time of the negotiations in view of the progress already made in solving the differences. They therefore urged that the Joint High Commission should advance to a conclusion their negotiations upon the remaining subjects as early as possible.

Regret suspension of negotiations.

"The British Commissioners replied that all such questions should be deferred until the Boundary question had been disposed of, either by agreement, or reference to arbitration. The manner in which they would be prepared to adjust some of the other important matters under consideration, must depend, in their view, upon whether it is possible to arrive at a settlement of all the questions which might at any time occasion acute controversy, and even conflict." \*

British defer matters until Alaska dispute is referred to Arbitration.

---

\* Protocol LXIII., *Canada Sessional Papers* (1899), No. 99.

British and  
Canadian  
hopes  
disappointed.

And thus, to the great disappointment and regret of Great Britain and Canada, the United States enticed to shipwreck the halcyon anticipations of a fair adjustment of international differences between the United States and Canada by the siren lure of an elusive and wily diplomacy ; and then offer a *tabula ex naufragio* of protocol sorrows.

Sir J. Mac-  
donald on  
U. S. un-  
friendly  
policy, and  
British in-  
difference, to  
Canada.

The late Sir John A. Macdonald, who represented Canada in the negotiations for the Treaty of Washington, in 1871, realized the historic continuity of the unneighbourly policy of the United States, as well as the British indifference to Canadian interests, when he thus wrote to one of his colleagues : "The American Commissioners have found our English friends of so squeezable a nature, that their audacity has grown beyond all bounds." And he added : "Having made up my mind that the Americans want everything, and will give us nothing in exchange, one of my chief aims now is to convince the British Commissioners of the unreasonableness of the Yankees." Disheartened by an unsympathetic response to his efforts, he then wrote, "I am greatly disappointed at the course taken by the British Commissioners. They seem to have only one thing in their minds—that is, to go to England with a Treaty in their pockets,—no matter at what cost to Canada."\* This British indifference to Canadian interests has, in the many instances recorded in the preceding pages, encouraged the United States in assuming an aggressive policy against Canada's international rights and territorial sovereignty.

Disheartened  
at British  
response.

Great  
Britain's  
modern Colo-  
nial policy.

Since Sir John Macdonald wrote, thanks to the sturdiness of Canadian statesmen, Great Britain has given up presenting to Canada a pantomime of diplo-

---

\* *Life of Sir John A. Macdonald*, by Joseph Pope, v. 2, p. 105.

matic negotiations with the United States, from which the *digiti clamosi* of Canada's political interests were conspicuously absent. And now her earlier policy of indifference to Colonial interests has, happily for the Empire, become an estranged sentiment. And the modern Imperialism which is sowing the seeds of a Greater United Britain, will, it is hoped, hereafter bring forth Empire-fruit not to be repented of. May it also produce a beneficent harvest of peaceful and neighbourly international relations between Great Britain, Canada and the United States. But that Canada's share therein shall be assured and real, it should be an essential condition in any Empire-compact for the more complete consolidation of our Greater United Britain, that in all diplomatic negotiations, and Treaty-adjustments with the Government of the United States, Canada, as the only nation-community of Greater Britain most affected by the international policy of her neighbour nation, shall have an advisory and, in matters affecting Canadian interests, a controlling diplomatic influence.\*

But in the evolution of any compact for the better consolidation of an Empire federation, the advocates of this modern Imperialism must not forget that while, externally, and to foreign nations, the Imperial Crown represents the sovereignty and unity of the whole Empire, and is also internally acknowledged to represent, constitutionally, the supreme regal authority over

British  
indifference  
now an  
estranged  
sentiment.

Canada's  
share in dip-  
lomatic nego-  
tiations with  
U.S.

British Crown  
constitution-  
ally the same  
in British  
islands and  
colonies.

---

\* "During 1889, a resolution was brought forward in the Canadian House of Commons in favor of giving the Dominion the right of negotiating and concluding Treaties. It was generally felt that the object sought for was the power to conclude Treaties with the United States. \* \* It is a fact that British Diplomacy has cost Canada dear." *Problems of Greater Britain*, by Sir C. W. Dilke, M.P., pp. 63-4.

Colonial subjects practically governed by the Island subjects of the Crown.

Fundamental axioms of British Constitution.

every portion of that Empire; yet a constitutionally illogical usage prevails by which the Crown of the colonial nation-communities is suzerain and subordinate to the Crown of the island nation-communities; and that the colonial subjects of the Crown are thereby practically subordinated to the island subjects of the Crown.

This present controlling and suzerain authority of the Crown of the island nation-communities, over the Crown of the colonial nation-communities,—necessary in their early development,—is a question which must, some day, loom persuasively, or imperiously, for mutual and thoughtful re-consideration on the Imperialistic horizon; for equal rights of nationhood, and of citizenship, and equal authority in Parliamentary government, for all the subjects of the Crown, wherever on British soil their homes may be, are fundamental axioms of the British Constitution.\*

---

\* It may be interesting to the modern advocates of "Imperial Federation" to quote here a clause from the Royal Instructions under the Sign Manual of King George III., dated the 12th April, 1778, authorizing the Commissioners for Quieting Divers Jealousies in the North American Colonies, appointed under the Statute 18 George III. c. 13, to propose Colonial Representation in the Imperial Parliament, and which may be considered as bringing the great question of "Imperial Federation" for the first time into the domain of practical politics:—"If it should be desired that our subjects in America should have any share of Representation in our House of Commons, such a proposal may be admitted by you, so far as to refer the same to the consideration of our two Houses of Parliament; and it will be proper that in stating such a proposition, the mode of Representation, the number of the Representatives, which ought to be very small, and the considerations offered on their part, in return for so great a benefit, should be precisely and distinctly stated." Another clause proposed a Federation of the American colonies "for the better management of the general concerns and interests of the said colonies, and to preserve and secure their connection with Great Britain." MS. State Papers, Public Record Office, tit. *America and the West Indies*, v. 299.



## APPENDIX No. 1.

ARTICLES OF THE TREATY OF 1825, BETWEEN GREAT BRITAIN  
AND RUSSIA, DESCRIBING THE BOUNDARIES OF ALASKA.

(Pages 85-89.)

*Articles III. and IV. were copied into the Treaty of 1867, between Russia  
and the United States.*

## ARTICLE III.

The line of demarcation between the possessions of the High Contracting Parties upon the coast of the continent and the islands of America to the north-west, shall be drawn in the manner following :

Commencing from the southernmost part of the island called Prince of Wales Island, which point lies in the parallel of 54° 40' north latitude, and between the 131st and the 133rd degree of west longitude (meridian of Greenwich), the said line shall ascend to the north along the channel called Portland Channel, as far as the point of the continent where it strikes the 56th degree of north latitude ; from this last-mentioned point, the line of demarcation shall follow *the summit of the mountains situated parallel to the coast*, as far as the point of intersection of the 141st degree of west longitude (of the same meridian) ; and, finally, from the said point of intersection, the said meridian-line of the 141st degree, in its prolongation as far as the Frozen Ocean, shall form the limit between the Russian and British possessions on the continent of America to the north-west.

## ARTICLE IV.

With reference to the line of demarcation laid down in the preceding Article, it is understood ;

1st. That the island called Prince of Wales Island shall belong wholly to Russia.

2nd. That wherever *the summit of the mountains* which extend in a direction *parallel to the coast*, from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude, *shall prove to be at a distance of more than 10 marine leagues from the Ocean, the limit between the British possessions and the line of coast (la lisière de côte) which is to belong to Russia*, as above mentioned, shall be formed by a line parallel to the windings of the coast, and which *shall never exceed the distance of 10 marine leagues therefrom*.

## ARTICLE VI.

It is understood that the subjects of His Britannic Majesty, from whatever quarter they may arrive, whether from the Ocean, or from the interior of the continent, *shall for ever enjoy the right of navigating freely*, and without any hindrance whatever, *all the Rivers and Streams which, in their course towards the Pacific Ocean, may cross the line of demarcation upon the line of coast (sur la lisière de la côte) described in Article III. of the present Convention*.

## APPENDIX No. 2.

PROVISIONAL BOUNDARY BETWEEN CANADA AND ALASKA IN  
THE REGION ABOUT THE HEAD OF LYNN CANAL.*Hay-Tower Agreement signed on the 20th October, 1899.*

(Page 96.)

"It is hereby agreed between the Governments of the United States and of Great Britain that the boundary-line between Canada and the territory of Alaska in the region about the head of Lynn Canal shall be provisionally fixed as follows, without prejudice to the claims of either Party in the permanent adjustment of the international boundary:—

"In the region of the Dalton Trail, a line beginning at the peak west of Porcupine Creek, marked on the Map No. 10 of the United States' Commission, December 31, 1895, and on sheet No. 18 of the British Commission, December 31, 1895, with the number 6500; thence running to the Klehini (or Klahela) River, in the direction of the peak north of that river, marked 5020 on the aforesaid United States' Map, and 5025 on the aforesaid British Map; thence following the high or right bank of the said Klehini River to the junction thereof with the Chilkat River, a mile and a-half, more or less, north of Klukwan,\*—provided that persons proceeding to or from Porcupine Creek shall be freely permitted to follow the trail between the said creek and the said junction of the rivers into and across the territory on the Canadian side of the temporary line wherever the trail crosses to such side, and, subject to such reasonable Regulations for the protection of the revenue as the Canadian Government may prescribe, to carry with them over such part or parts of the trail between the said points as may lie on the Canadian side of the temporary line, such goods and articles as they desire, without being required to pay any customs duties on such goods and articles; and from said junction to the summit of the peak east of the Chilkat River, marked on the aforesaid Map No. 10 of the United States' Commission with the number 5410, and on the Map No. 17 of the aforesaid British Commission with the number 5490.

"On the Dyea and Skagway Trails, the summits of the Chilkoot and White Passes.†

"It is understood, as formerly set forth in communications of the Department of State of the United States, that the citizens or subjects of either Power, found by this arrangement within the temporary jurisdiction of the other, shall suffer no diminution of the rights and privileges which they now enjoy.

"The Government of the United States will at once appoint an officer or officers, in conjunction with an officer or officers to be named by the Government of Her Britannic Majesty, to mark the temporary line agreed upon by the erection of posts, stakes, or other appropriate temporary marks.

"It shall be understood that the foregoing Agreement is binding upon the two Governments from the date of [the] written acceptance of its terms."

---

\* See Provisional Boundary, 1899, marked (1) on Map, Appendix No. 3.

† See Provisional Boundaries, 1899, marked respectively (2) and (3) on the same Map.

# APPENDIX No. 3.

MAP OF LYNN CANAL, SHOWING THE BOUNDARY LINES  
CLAIMED BY CANADA AND THE UNITED STATES.

(Pages 85-89.)



(1), (2) and (3) indicate the localities of the three Provisional Boundaries described in the Agreement of the 20th October, 1899, in Appendix No. 2.









FC Hodgins, Thomas  
249  
.H6 British and American  
1900 diplomacy affecting  
Canada, 1782-1899

ISSUED TO

FC Hodgins, Thomas  
249  
.H6 British and American  
1900 diplomacy affecting  
Canada, 1782-1899





P9-DJH-748

